

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE NO.

NATHANIEL LAVALLEE, CORDELLE SIMMONDS, ISSAC VERDEJO, JAMAR T.
GILLERSON, ARNOLD FREEMAN A.K.A. JEFFREY THOMPSON, HAROLD
VARGAS, REGINALD C. SMITH, COREY L. SMITH, DEBRA STAPLES, CHARLES
FOLEY, DOUGLAS LEWIS, KEITH E. TASKEY, DANA J. JONES, ANGEL
RIVERA, JOSEPH POLAMTIER, MARIA ALVARADO, JONATHAN MARRERO,
OMAR HALL, LUIS A. OSORIO, OTHER UNKNOWN INDIGENT CRIMINAL
DEFENDANTS, AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF FUTURE DEFENDANTS)

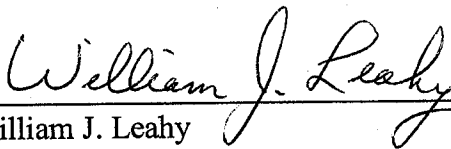
V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

MOTION TO WAIVE FILING FEE

Now come the petitioners in this matter and move that the filing fee for the
accompanying petition for relief pursuant to G.L. c.211, §3, be waived. In support,
petitioners submit the accompanying affidavit of counsel.

COMMITTEE FOR PUBLIC COUNSEL SERVICES
By its Chief Counsel,



William J. Leahy

BBO #290140

COMMITTEE FOR PUBLIC COUNSEL SERVICES
44 Bromfield Street, Suite 200
Boston, Massachusetts 02108
(617) 482-6212

Dated: May 5, 2004.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE NO.

NATHANIEL LAVALLEE, CORDELLE SIMMONDS, ISSAC VERDEJO, JAMAR T. GILLERSON, ARNOLD FREEMAN A.K.A. JEFFREY THOMPSON, HAROLD VARGAS, REGINALD C. SMITH, COREY L. SMITH, DEBRA STAPLES, CHARLES FOLEY, DOUGLAS LEWIS, KEITH E. TASKEY, DANA J. JONES, ANGEL RIVERA, JOSEPH POLAMTIER, MARIA ALVARADO, JONATHAN MARRERO, OMAR HALL, LUIS A. OSORIO, OTHER UNKNOWN INDIGENT CRIMINAL DEFENDANTS, AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
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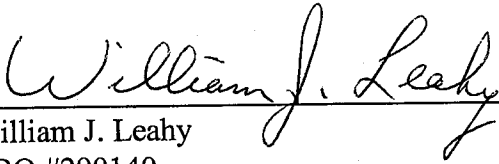
AFFIDAVIT IN SUPPORT OF MOTION TO WAIVE FILING FEE

I, William J. Leahy, hereby state that:

1. I am the Chief Counsel of the Committee for Public Counsel Services (CPCS).
2. The named plaintiffs in this action have each been found to be indigent by the

Springfield District Court.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 6th OF
MAY, 2004.


William J. Leahy
BBO #290140
COMMITTEE FOR PUBLIC COUNSEL SERVICES
44 Bromfield Street, Suite 200
Boston, Massachusetts 02108
(617) 482-6212

COMMONWEALTH OF MASSACHUSETTS

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SUPREME JUDICIAL COURT
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SINGLE JUSTICE
NO.

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AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

PETITION FOR RELIEF PURSUANT
TO G.L. c. 211, §3

Now come the petitioners in the above-entitled matter and move that this Honorable Court exercise its power of superintendence over the operations of the Springfield District Court in Hampden County and declare that petitioners are being held unlawfully and in deprivation of their right to due process of law and right to counsel as otherwise guaranteed to them by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and by Article 12 of the Massachusetts Declaration of Rights.

In support of this petition, the petitioners assert that:

1. Each of the named petitioners has been arraigned or otherwise appeared in the Springfield District Court in Hampden County during the week of May 3, 2004,

on criminal charges. The Court (Payne, J.) has found that each of the named petitioners is indigent and otherwise qualifies for appointed counsel under G.L. c. 211D, §§1 et seq. See affidavit of Andrew Silverman at p. 3, ¶7.

2. Each of the named petitioners would ordinarily be assigned a private counsel “bar advocate” through the Private Counsel Division of the Committee for Public Counsel Services (hereinafter “CPCS”), see G.L. c. 211D, §§1 et. seq., but because bar advocate attorneys have stopped accepting appointments in Springfield District Court, petitioners have not had attorneys assigned to represent them. See affidavit of Andrew Silverman at p. 3, ¶¶6-8; affidavit of Attorney Carol J. Gray at p. 2, ¶¶3-4. Each of the named petitioners is without counsel on his or her pending criminal cases, and each has been ordered held in custody in lieu of bail. Id.
3. Although the Springfield District Court (Payne, J.) has issued “Notice of Assignment of Counsel” forms for some of the named petitioners to William J. Leahy, Chief Counsel of CPCS, no counsel have in fact been appointed to represent the named petitioners. See affidavit of Andrew Silverman at p. 3, ¶8.
4. Because the rates of compensation paid by CPCS to bar advocate attorneys are so low and private counsel cannot afford to undertake representation of CPCS clients without themselves suffering financial detriment, CPCS has been unable to attract an adequate number of attorneys in Hampden County to accept appointments in Springfield District Court. See affidavit of William J. Leahy at p. 1-2, ¶7; affidavit of Nancy T. Bennett at pp. 2-4, ¶¶7-17; affidavit of Andrew Silverman at

p. 3, ¶6; affidavit of Christine Cosby at pp. 1-2, ¶3-9; affidavit of Patricia A.

Wynn at pp. 2 & 5, ¶¶7-9, 22. Pursuant to legislative direction, as specified in the fiscal year 2004 state budget, bar advocate attorneys are paid thirty dollars per hour for representation on District Court jurisdiction criminal cases, and thirty-nine dollars per hour on Superior Court jurisdiction criminal cases. See affidavit of Patricia A. Wynn at p. 3, ¶¶12, 14.

5. The staff attorneys who work in the CPCS Public Defender Division office in Hampden County are not able to represent the named petitioners because each of the staff attorneys already has a full caseload of Superior Court jurisdiction cases and could not provide competent representation to existing clients if he or she were required to take on additional cases. See affidavit of Andrew Silverman at pp. 2-3, ¶5; affidavit of William J. Leahy at pp. 1-2, ¶7.
6. The Springfield District Court (Payne, J.) has declined to act pursuant to either its inherent authority or Rule 3:10 of the Supreme Judicial Court's Rules to appoint bar advocate attorneys to represent petitioners at any rate of pay greater than that authorized by the Legislature (see *ante* at ¶5). See affidavit of Andrew Silverman at p. 4, ¶9,

WHEREFORE, the petitioners move that this Court make the following findings and orders:

1. Declare that the failure to provide counsel for the named petitioners, as well as for those criminal defendants who were arraigned today or who will be arraigned in the coming days in Springfield District Court, creates an emergency situation which threatens to have a severe,

adverse impact on the administration of justice in the Springfield District Court and requires this Court's exercise of its superintendence powers and its inherent authority over the courts and the bar.

2. Find that the named petitioners have been denied their right to due process of law and right to counsel guaranteed to them by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article 12 of the Massachusetts Declaration of Rights, and G.L. c.211D, §§1 et seq.

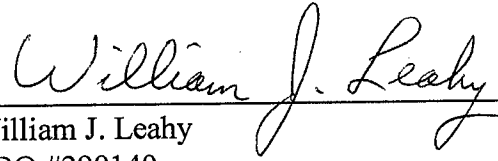
3. Order one or more of the following remedies:

- a. the defendant justices shall, pursuant to the judicial branch's inherent authority and S.J.C. Rule 3:10, §5, appoint a qualified private counsel to represent each of the petitioners at rates of compensation which are adequate to fairly compensate counsel and assure the competent representation of petitioners;
- b. this Court should determine a fair rate of compensation for assigned private counsel, and direct CPCS to begin paying assigned private counsel according to that rate or rates;
- c. such other relief as this Court determines is necessary to ensure the protection of the petitioners' constitutional right to counsel.¹

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In the absence of a remedy which will assure the appointment of qualified counsel for each of the petitioners, this Court would be required to order the release from custody of all petitioners and the stay of further proceedings in their cases.

COMMITTEE FOR PUBLIC COUNSEL SERVICES
By its Chief Counsel,

A handwritten signature in cursive script, reading "William J. Leahy", written over a horizontal line.

William J. Leahy
BBO #290140

COMMITTEE FOR PUBLIC COUNSEL SERVICES
44 Bromfield Street, Suite 200
Boston, Massachusetts 02108
(617) 482-6212

Dated: May 5, 2004.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE
NO.

NATHANIEL LAVALLEE, CORDELLE SIMMONDS, ISSAC VERDEJO, JAMAR T. GILLERSON, ARNOLD FREEMAN A.K.A. JEFFREY THOMPSON, HAROLD VARGAS, REGINALD C. SMITH, COREY L. SMITH, DEBRA STAPLES, CHARLES FOLEY, DOUGLAS LEWIS, KEITH E. TASKEY, DANA J. JONES, ANGEL RIVERA, JOSEPH POLAMTIER, MARIA ALVARADO, JONATHAN MARRERO, OMAR HALL, LUIS A. OSORIO, OTHER UNKNOWN INDIGENT CRIMINAL DEFENDANTS,
AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR RELIEF PURSUANT
TO G.L. c. 211, §3

The named petitioners, as well as the Committee for Public Counsel Services (CPCS), on behalf of its future clients, have brought this petition pursuant to G.L. c. 211, §3, asking this Court (1) to exercise its power of superintendence over the operations of the Springfield District Court, its inherent authority over the courts, and its power to regulate the practice of law and the conduct of attorneys; (2) to declare that the petitioners' right to due process of law and right to counsel have been violated; and (3) to order that immediate steps be taken to protect the constitutional rights of defendants appearing in the Springfield District Court.

1. THIS COURT HAS JURISDICTION TO GRANT RELIEF TO PETITIONER UNDER G.L. c. 211, §3, AS WELL AS PURSUANT TO ITS INHERENT POWERS TO ENSURE THE PROPER OPERATION OF THE COURTS AND TO REGULATE THE PRACTICE OF LAW AND THE CONDUCT OF ATTORNEYS.

G.L. c. 211, §3, as amended by St. 1992, c. 379, §61, provides that this Court “shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided” and the authority to “issue such writs, summonses and other processes and such orders directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration....”

This Court has a long tradition of invoking its authority under G.L. c. 211, §3 to ensure that the fundamentals of justice are provided in the criminal courts of the Commonwealth. See, e.g., Aime v. Commonwealth, 414 Mass. 667, (1993) (ruling pursuant to G.L. c.211, §3 on constitutionality of preventive detention statute); Jenkins v. Chief Justice of the District Court Department, 416 Mass. 221, 222 (1993) (named plaintiffs and CPCS successfully petitioned the Court for an order ruling that warrantless arrests must be followed by a prompt judicial determination of probable cause); Foley v. Commonwealth, 429 Mass. 496 (1999) (petition pursuant to G.L. c.211, §3, challenging the holding of court sessions at a correctional facility).

The judicial branch is also entitled to invoke its inherent powers to ensure the proper administration of justice.

It is axiomatic that, as an independent department of government, the judiciary must have adequate and sufficient resources to ensure the proper operation of the courts. It would be illogical to interpret the Constitution as creating a judicial department with awesome powers over the life, liberty, and property of every citizen while, at the same time, denying to the judges authority to determine the basic needs of their courts as to equipment, facilities and supporting personnel. Such authority must be vested in the judiciary if the courts are to provide justice, and the people are to be secure in their rights, under the Constitution.

O'Coins, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507, 510 (1972). “[A]mong the inherent powers possessed by every judge is the power to protect his court from impairment resulting from inadequate facilities or a lack of supplies or supporting personnel.” Id. (emphasis added). Moreover, this Court possesses “[t]he power to regulate the practice of law and the conduct of attorneys.” In re Kenney, 399 Mass. 431, 438-439 (1987).

The failure to provide counsel to indigent defendants arraigned in the Springfield District Court, particularly when those defendants are then held in custody in lieu of bail and without counsel, constitutes an extraordinary circumstance which is having a severe, adverse impact on the administration of justice. In order to ensure the protection of the constitutional right to counsel of criminal defendants arraigned in the Springfield District Court, it is necessary and appropriate for this Court to address the claims set forth in the instant petition.

2. THE COMMITTEE FOR PUBLIC COUNSEL SERVICES HAS STANDING TO BRING THIS PETITION.

CPCS seeks to represent the interests of present and future indigent defendants who are arraigned in the Springfield District Court and who, due to the absence of private counsel willing to accept assignments, have already been or will be deprived of their right to the effective assistance of counsel.

A Single Justice of this Court (Liacos, J.) has previously acknowledged that the Committee has standing to represent the interests of its future clients. In Committee for Public Counsel Services v. The First Justice of the Dorchester District Court, et al. (SJ No. 88-23), the Committee, pursuant to G.L. c.211, §3, petitioned on behalf of its current and future clients for relief from what were alleged to be unconstitutionally dangerous conditions in the holding cell

area of the Dorchester District Court. The Single Justice (Liacos, J.) held that, "The Committee has standing to pursue, preserve, and protect the rights of criminal defendants brought to the Dorchester Court for arraignment and trial." (See the Memorandum of Decision of the Single Justice of February 9, 1988, p. 6).

The Committee's representation of the interests of its future clients is consistent with this Court's recognition that "representative standing" is appropriate in cases in which it is "difficult or impossible for the actual rightholders to assert their claims." Slama v. Attorney General, 384 Mass. 620, 624 (1982), citing Wilmington v. Department of Pub. Utils., 340 Mass. 432 (1960). In the instant litigation, it is evident that those petitioners who are held without counsel are unable to assert their claims. Equally clear is the fact that future clients of the Committee for Public Counsel Services are not yet able to assert their claims which will only begin to accrue when they are arrested and brought to court for arraignment. This Court should hold that the Committee for Public Counsel Services has representative standing to raise the claims of its future clients in this case.

3. THE PETITIONERS' CONSTITUTIONAL RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL HAVE BEEN VIOLATED.

The Sixth and Fourteenth Amendments to the United States Constitution, Article 12 of the Massachusetts Declaration of Rights, and G.L. c. 211D, §§1 et seq., all provide that the petitioners in this case are entitled to be represented by counsel. The constitutional right to the assistance of counsel commences at "the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information or arraignment.... It is then that a defendant finds himself faced with the prosecutorial forces of organized society,

and immersed in the intricacies of substantive and procedural criminal law.” Commonwealth v. Smallwood, 379 Mass. 878, 884 (1980), quoting Kirby v. Illinois, 406 U.S. 682, 689 (1972). See also Commonwealth v. Patterson, 432 Mass. 767, 776 n.10 (2000) (“The defendant’s Sixth Amendment and art. 12 rights to the effective assistance of counsel did not attach until ... arraignment”).

The named petitioners in this case are indigent defendants who have been arraigned in the Springfield District Court, have requested the appointment of counsel to represent them, and have been held in lieu of bail and without the assignment of individual attorneys to provide legal counsel.¹ Although CPCS has received written notification from the Springfield District Court as to the nineteen named plaintiffs and knows that those individuals were arraigned and held in custody without having counsel assigned to their individual cases, it is believed that there are additional individual defendants who were arraigned without counsel in the last two days in Springfield District Court, including approximately eight individuals today.

On May 5, 2004, CPCS Chief Counsel William J. Leahy appeared in Springfield District Court and moved that the Court (Payne, J.) appoint certified private counsel for each of the nineteen named petitioners. Chief Counsel Leahy asked that the Court assign counsel for each

1

On May 4, 2004, a justice of the Springfield District Court, Payne, J., issued a series of “Notice[s] of Assignment of Counsel,” purporting to assign the petitioners’ cases to the CPCS Chief Counsel, William J. Leahy. While the Chief Counsel bears overall responsibility under G.L. c. 211D for the provision of competent representation to some 250,000 indigent persons annually who qualify for representation by CPCS counsel, the Chief Counsel cannot personally serve as counsel for all persons arraigned in the Springfield District Court. On May 5, 2004, at a hearing in Springfield District Court, described infra, the Court (Payne, J.) indicated that its assignment of cases was to CPCS, but not to the Chief Counsel individually.

petitioner pursuant to Supreme Judicial Court Rule 3:10, section 5, or pursuant to its inherent authority under the O'Coins doctrine, and order that counsel be paid in an amount greater than thirty dollars per hour. The Court denied the motion for assignment of counsel and denied the motion for release on personal recognizance and a stay of proceedings.

While the lack of CPCS assigned counsel to represent petitioners may stem from the inadequate compensation levels paid to bar advocate attorneys, and the resulting inability to attract private counsel to take CPCS cases, as well as from the decrease in the number of Public Defender Division staff attorneys occasioned by budget reductions, the deprivation of counsel suffered by the petitioners is no less real, and violates fundamental constitutional rights. Each passing day without counsel threatens the ability of petitioners to protect their legal rights, gather and preserve relevant and exculpatory evidence, exercise their right to a speedy trial, prevent the ongoing loss of their liberty, and otherwise take the many steps necessary to ensuring a fair trial and just determination of their cases. This Court has firmly stated that it is not an acceptable answer to the violation of constitutional rights that there is a lack of appropriated public funds to pay for that which is constitutionally required.

We flatly reject the notion that an arm of the State may be allowed to violate an individual's constitutional rights because funds have not been appropriated to remedy the wrong.

Michaud v. Sheriff of Essex County, 390 Mass. 523, 533 (1983). See also Richardson v. Sheriff of Middlesex County, 407 Mass. 455, 467 (1990); Morales-Feliciano v. Parole Board of Puerto Rico, 887 F.2d 1, 14 (1st Cir. 1989) ("budgetary constraints ordinarily do not, in and of themselves, provide a legal excuse for noncompliance"); Lareau v. Manson, 651 F.2d 96, 104 (2^d Cir. 1981) (state's interest in spending less money on prisons cannot excuse overcrowding);

Harris v. Champion, 15 F.3d 1538, 1362 (10th Cir. 1994) (holding that right to counsel on appeal was violated by State's systemic underfunding of indigent criminal appeals, and directing that district court entertain writs of habeas corpus in any case where State's failure to provide adequately compensated counsel resulted in delay of more than two years from the filing of a notice of appeal to a decision by the state appellate court: "The rights announced in Griffin v. Illinois, [351 U.S. 12 (1956),] and Douglas v. California, [372 U.S. 353 (1963),] cannot be allowed to become meaningless through understaffing of the state offices responsible for assuring those rights"), quoting United States ex rel. Smith v. Twomey, 486 F.2d 736, 739 (7th Cir. 1973)), cert. denied, 416 U.S. 994 (1974)"); New York County Lawyers' Association v. New York, 196 Misc. 2d 761, 763 N.Y.S.2d 397, 398 (NY Super. 2003) (holding that chronic underfunding of New York's assigned counsel system violated rights of indigents entitled to counsel, and ordering that compensation rate be raised to \$90 per hour; "[t]he true administration of justice is the firmest pillar of good government. The courts of this State cannot be true to George Washington's conviction when the most vulnerable in our society, children and indigent adults, appear in courts without advocates to champion or defend their causes.... This pillar is essential to the stability of our political system. It should therefore be continually strengthened and not allowed to crumble into the detritus of a constitutional imbalance among the branches of government. Equal access to justice should not be a ceremonial platitude, but a perpetual pledge vigilantly guarded") (footnote omitted).

4. THE REMEDIES AVAILABLE TO THIS COURT.

Consistent with this Court's inherent authority to exercise such powers as are "essential to the function of the judicial department" and "to its capacity to decide cases", Querubin v. Commonwealth, 440 Mass. 108, 114 (2003), the Court should direct the defendant justices to appoint counsel for each petitioner pursuant to S.J.C. Rule 3:10, §5, on the ground that there exist "exceptional circumstances" which "necessitate[] the use of a different procedure" for the assignment of counsel. Id. Counsel appointed pursuant to the section five process would be compensated at a rate determined by the defendant justices to be reasonably adequate to assure the provision of counsel.

An alternate remedy open to this Court is for it to determine a fair rate of compensation for assigned private counsel, and direct CPCS to begin paying assigned private counsel according to that rate or rates.² At some point, however, in the absence of a supplemental budget appropriation, such an order would result in the exhaustion of the funds appropriated for CPCS in the current fiscal year.³

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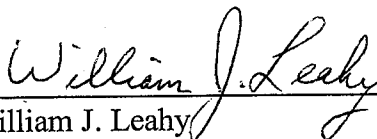
In 2002, CPCS' governing committee voted to set the rates for private counsel compensation at sixty dollars per hour for District Court cases, ninety dollars an hour for Superior Court offenses, and one hundred and twenty dollars per hour for murder cases. Since 1997, however, the General Appropriation Act for each fiscal year has authorized payment by CPCS at the rate of only thirty dollars an hour for District Court, thirty-nine dollars per hour for Superior Court, and fifty-four dollars per hour for murder cases. See the affidavit of Patricia Wynn at pp. 3-4, ¶¶17-18.

3

This Court can take judicial notice of the fact that the Legislature is currently in the midst of its process of formulating a budget for the Commonwealth for the fiscal year which commences on July 1, 2004, and as a part of that process, the Massachusetts House of Representatives has passed a budget which includes an underfunded twelve million dollar "Indigent Counsel Salary Enhancement Trust Fund" which is intended to be used to increase CPCS private counsel compensation rates by approximately five dollars per

COMMITTEE FOR PUBLIC COUNSEL SERVICES

By its Chief Counsel,



William J. Leahy
BBO #290140

COMMITTEE FOR PUBLIC COUNSEL SERVICES
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Dated: May 5, 2004.

hour. Should the funding for this trust fund be included in the Legislature's final fiscal year 2005 budget, there may be an increased ability on the part of private counsel to accept assignments in CPCS cases in Springfield District Court.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF ANDREW SILVERMAN

I, Andrew Silverman, do hereby state on information and belief the following:

1. I am the Deputy Chief Counsel for the Public Defender Division of the Committee for Public Counsel Services (CPCS). I have been employed as an attorney with CPCS since 1980, and I have served as Deputy Chief Counsel for the Public Defender Division since July, 1997.
2. My responsibilities as Deputy Chief Counsel include oversight and management of the 13 Public Defender Division offices located throughout the Commonwealth of Massachusetts, including the Public Defender Division office located at 1145 Main Street, #208, Springfield, Massachusetts. The Springfield office is the sole CPCS Public Defender Division office in Hampden County.

3. The Massachusetts public defender agency (formerly the Massachusetts Defenders Committee and now the Committee for Public Counsel Services) has never had a sufficient number of staff attorneys in its Hampden County office so as to enable it to accept cases from all of the district courts located in Hampden County. Instead, the longstanding policy of the office has been to accept appointments only in Superior Court jurisdiction cases (so called "bind over" cases) that either originated in Springfield District Court or were commenced by direct indictment in Hampden County Superior Court.
4. Substantial budget cutbacks over the last three fiscal years in the funding for the Public Defender Division have resulted in significant reductions during that time period in the number of staff attorneys employed by the Public Defender Division. Three years ago there were approximately 130 attorneys employed statewide by the Public Defender Division; today, there are only 109, and five of those 109 attorneys are currently on extended leaves of absence.
5. As a result of the budget cutbacks described above, for most of the last two years the Springfield Public Defender Division office has had only eight staff attorneys. The office currently has ten attorneys. In January, 2004, CPCS Chief Counsel William Leahy and I instructed Andrew Klyman, the Attorney-in-Charge of the Springfield Public Defender Division, that his staff attorneys were not to have caseloads that exceeded specified caseload caps. The authorized caps for the Springfield office are the maximum number of cases which can be competently handled by the staff attorneys in the office. The attorneys in the Springfield office

are at their caseload caps and cannot take on additional cases from the Springfield District Court, cases which until this week were handled by approximately 150 bar advocate attorneys.

6. In the last two days, the insubstantial hourly rates paid by CPCS have resulted in a situation where it has been unable to attract virtually any private bar advocate attorneys to accept appointments on CPCS cases in Springfield District Court. No bar advocate attorneys accepted cases on Monday, May 3, 2004, and only one bar advocate accepted cases on Tuesday, May 4, 2004. Virtually every indigent defendant arraigned in Springfield District Court in the last two days has been arraigned without the benefit of counsel, and many of those defendants have been held in custody in lieu of bail. The attached article, "Public defenders absent," which appeared in the May 4, 2004, online version of the *Springfield Republican*, describes what has taken place in Springfield District Court during the last two days. See also the attached article, "Poor held as lawyers stop taking new cases," which appeared in *The Boston Globe* on May 5, 2004.
7. Each of the named petitioners in this matter has appeared in the Springfield District Court this week, and has been found to be indigent by the Court (Payne, J.) and to qualify for assignment of appointed counsel under G.L. c.211D, §§1 et seq.
8. On May 4, 2004, a justice of the Springfield District Court, Payne, J., issued a series of "Notice[s] of Assignment of Counsel," purporting to assign the petitioners' cases to the CPCS Chief Counsel, William J. Leahy. Copies of the

notices of assignment of counsel are attached hereto as Attachment 1.

9. On May 5, 2004, CPCS Chief Counsel William J. Leahy appeared in Springfield District Court and moved that the Court (Payne, J.) appoint certified private counsel for each of the nineteen individuals named as petitioners in this petition. A copy of the "Motion to Assign Certified Private Counsel" filed by Chief Counsel Leahy for each of the named petitioners is attached hereto as Attachment 2. Chief Counsel Leahy asked that the Court assign counsel for each petitioner pursuant to Supreme Judicial Court Rule 3:10, section 5, and order that counsel be paid in an amount greater than thirty dollars per hour. The Court denied the motion for assignment of counsel and denied the motion for release on personal recognizance and a stay of proceedings. The Court suggested that perhaps CPCS had a contractual right to require private counsel bar advocates to accept case assignments. Chief Counsel Leahy explained that private counsel bar advocates enter into contracts not with CPCS, but rather with the individual county Bar Advocate program, and those contracts do not contain a provision requiring that private counsel accept case assignments as a condition of participation in the program.
10. The private counsel bar advocate attorneys have virtually stopped taking CPCS cases in Springfield District Court because they cannot afford the financial sacrifice which is required to represent indigent clients at the hourly compensation rates paid by CPCS.
11. On May 5, 2004, the Springfield District Court (Payne, J.) directed that notices of

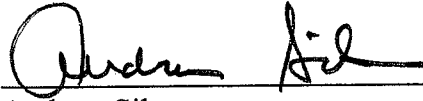
assignment of counsel be issued to CPCS, designating Chief Counsel William J.

Leahy as the "attorney assigned" for the following defendants, each of whom was arraigned without counsel and is now held in custody in lieu of bail:

- (1) Nathaniel Lavallee
- (2) Cordelle Simmonds
- (3) Issac Verdejo
- (4) Jamar T. Gillerson
- (5) Arnold Freeman a.k.a. Jeffrey Thompson
- (6) Harold Vargas
- (7) Reginald C. Smith
- (8) Corey L. Smith
- (9) Debra Staples
- (10) Charles Foley
- (11) Douglas Lewis
- (12) Keith E. Takey
- (13) Dana J. Jones
- (14) Dana Jones
- (15) Angel Rivera
- (16) Joseph Polamtier
- (17) Maria Alvarado
- (18) Jonathan Marrero
- (19) Omar Hall
- (20) Luis A. Osorio

10. Attached hereto are true copies of the notices of assignment of counsel described in paragraph nine, supra.
11. Approximately eight additional defendants were arraigned in Springfield District Court on May 5, 2004, and although each was found to qualify for assigned counsel, no counsel were available to take appointments.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS THE 5th DAY OF
MAY, 2004.

A handwritten signature in black ink, appearing to read "Andrew Silverman", written over a horizontal line.

Andrew Silverman

BBO #462700

COMMITTEE FOR PUBLIC COUNSEL SERVICES

Public Defender Division

44 Bromfield Street, Room 200

Boston, Massachusetts 02108

(617) 482-6212

NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY

Attachment 1
DOCKET NUMBER
0423CR003927

Trial Court of Massachusetts
District Court Department



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 3	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED NATHANIEL LAVALLEE 18 WALNUT STREET 3 RD FLOOR SPRINGFIELD, MA			DEFENDANT DATE OF BIRTH 02/02/1986
			DEFENDANT PHONE ()-
			ATTORNEY BBO NUMBER 290140
			ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL DEFENDANT IN CUSTODY \$2,000.00 HAMPDEN HOUSE OF CORRECTION
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL) OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	266/15/A	BURGLARY, UNARMED c266 §15	04/27/2004
2	266/30/A	LARCENY OVER \$250 c266 §30(1)	04/27/2004
3	266/16/A	B&E NIGHTTIME FOR FELONY c266 §16	04/27/2004

Robert E. Pemi
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : FOR INDIGENT DEFENDANT

AUTHORIZED SIGNATURE X

Post-it
Date 05-04-11
of Pages 1
Fax Note
To B. J. Leahy
Fax# (617) 988-8495
From Chris Cosby
Phone# (413) 732-7110

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR004012

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 3	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED CORDELLE SIMMONDS 350 BOSTON ROAD SPRINGFIELD, MA 01109			0-	
			DEFENDANT DATE OF BIRTH 12/01/1985	DEFENDANT PHONE
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL	
			DEFENDANT IN CUSTODY \$2,500.00	
			HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL)	
			OTHER	

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32C/C	DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a)	05/03/2004
2	94C/32A/G	DRUG, POSSESS TO DISTRIB CLASS B c94C §32A(a)	05/03/2004
3	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	05/03/2004

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR001024

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 6	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED CORDELLE SIMMONDS 350 BOSTON RD SPRINGFIELD, MA 01108			()	
			DEFENDANT DATE OF BIRTH 12/01/1985	DEFENDANT PHONE
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL	
			DEFENDANT IN CUSTODY \$25,000.00	
			HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL)	
			OTHER	
NEXT EVENT		NEXT EVENT DATE & TIME	ROOM / SESSION	
ARRAIGNMENT		05/05/2004 08:00 a.m.	1 st Session	

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	265/15B/A	ASSAULT W/DANGEROUS WEAPON c265 §15B(b)	01/31/2004
2	269/10/J	FIREARM, CARRY WITHOUT LICENSE c269 §10(a)	01/31/2004
3	131/58/B	FIREARM, DISCHARGE NEAR HWAY c131 §58	01/31/2004
4	266/28/D	MOTOR VEH, MALICIOUS DAMAGE TO c266 §28(a)	01/31/2004
5	269/10/G	FIREARM WITHOUT FID CARD, POSSESS c269 §10(h)	01/31/2004
6	269/10/B	DANGEROUS WEAPON, CARRY c269 §10(b)	01/31/2004

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0323CR012227

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 1	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED ISAC VERDEJO 49 NORTHAMPTON STREET SPRINGFIELD, MA			0-	
			DEFENDANT DATE OF BIRTH 06/02/1984	DEFENDANT PHONE 0-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108	INCARCERATION STATUS IN THIS CASE DEFENDANT IN CUSTODY	BAIL
	HAMPDEN HOUSE OF CORRECTION	
	PURPOSE OF ASSIGNMENT (IF POST-TRIAL) OTHER	

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS			
COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	265/15B/A	ASSAULT W/DANGEROUS WEAPON c265 §15B(b)	12/24/2003
<div> CLERK MAGISTRATE SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103</div>			

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003952

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. Geoffrey C. Packard	NO. OF COUNTS 3	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED ISSAC VERDEJO 49 NORTHAMPTON AVE SPRINGFIELD, MA 01109			()	
			DEFENDANT DATE OF BIRTH 06/02/1984	DEFENDANT PHONE ()-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL	
			DEFENDANT IN CUSTODY \$5,000.00	
			HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL)	
			OTHER	
NEXT EVENT		NEXT EVENT DATE & TIME	ROOM / SESSION	
ARRAIGNMENT		05/05/2004 08:00 a.m.	1 st Session	

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	209A/7	ABUSE PREVENTION ORDER, VIOLATE c209A §7	04/29/2004
2	265/13A/B	A&B c265 §13A(a)	04/29/2004
3	266/28/D	MOTOR VEH, MALICIOUS DAMAGE TO c266 §28(a)	04/29/2004

Robert E. Z...
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2004

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL**
ATTORNEY COPY

DOCKET NUMBER
0423CR004010

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 2	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED JAMAR T GILLERSON 45 STOCKMAN ST 2 ND SPRINGFIELD, MA			0-	
			DEFENDANT DATE OF BIRTH 07/13/1976	DEFENDANT PHONE 0-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL DEFENDANT IN CUSTODY	
			HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL) OTHER	
NEXT EVENT		NEXT EVENT DATE & TIME	ROOM / SESSION	
ARRAIGNMENT		05/05/2004 08:00 a.m.	1 st Session	

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	265/13A/B	A&B c265 §13A(a)	05/04/2004
2	268/34A	FALSE NAME/SSN, ARRESTEE FURNISH c268 §34A	05/04/2004

[Signature]
CLERK OF DISTRICT COURT
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0323CR002425

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
1

COURT NAME AND ADDRESS
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

ARNOLD FREEMAN
72 GRENADA TERRACE 2L
SPRINGFIELD, MA

aka Jeffrey Thompson

0-

DEFENDANT DATE OF BIRTH
05/21/1969

DEFENDANT PHONE
0-

ATTORNEY BBO NUMBER
290140

ATTORNEY PHONE
(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108

INCARCERATION STATUS IN THIS CASE BAIL
DEFENDANT IN CUSTODY

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)
OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	266/30/A	LARCENY OVER \$250 c266 §30(1)	02/22/2003

Robert E. Fen
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR004017

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 2	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED JEFFREY A THOMPSON 74 GRENADA TERR 2L SPRINGFIELD, MA 01101-0308 <i>aka Arnold Freeman</i>			DEFENDANT DATE OF BIRTH 05/21/1969	DEFENDANT PHONE 0-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108	INCARCERATION STATUS IN THIS CASE DEFENDANT IN CUSTODY	BAIL \$1,000.00
	HAMPDEN HOUSE OF CORRECTION	
	PURPOSE OF ASSIGNMENT (IF POST-TRIAL) OTHER	

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	266/30A/F	SHOPLIFTING BY CONCEALING MDSE, 3 RD OFF. C266 §30A	05/03/2004
2	268/34A	FALSE NAME/SSN, ARRESTEE FURNISH c268 §34A	05/03/2004

Robert E. Bein
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0123CR004695

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 1	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED HAROLD VARGAS 44 HOME ST SPRINGFIELD, MA 01108			0-	
			DEFENDANT DATE OF BIRTH 10/06/1978	DEFENDANT PHONE 0-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL DEFENDANT IN CUSTODY	
			HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL) OTHER	

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32A/H	DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. C94C §32A(b)	05/02/2001

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003986

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 5	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED HAROLD VARGAS 44 HOME ST SPRINGFIELD, MA 01108			()-	
			DEFENDANT DATE OF BIRTH 10/06/1978	DEFENDANT PHONE ()-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL DEFENDANT IN CUSTODY HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL) OTHER	
NEXT EVENT ARRAIGNMENT		NEXT EVENT DATE & TIME 05/05/2004 08:00 a.m.	ROOM / SESSION 1 st Session	

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32A/F	DRUG, DISTRIBUTE CLASS B, SUBSQ.OFF. C94C §32A(b)	04/30/2004
2	94C/32A/H	DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. C94C §32A(b)	04/30/2004
3	269/10/G	FIREARM WITHOUT FID CARD, POSSESS c269 §10(h)	04/30/2004
4	94C/32E/A	COCAINE, TRAFFICKING IN c94C §32E(b)	04/30/2004
5	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	04/30/2004

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR BAIL ONLY**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0223CR003038

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
1

COURT NAME AND ADDRESS
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

HAROLD VARGAS
44 HOME ST
SPRINGFIELD, MA 01108

()-

DEFENDANT DATE OF BIRTH
10/06/1978

DEFENDANT PHONE
()-

ATTORNEY BBO NUMBER
290140

ATTORNEY PHONE
(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108

INCARCERATION STATUS IN THIS CASE BAIL
DEFENDANT IN CUSTODY

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/34/D	DRUG, POSSESS CLASS B, SUBSQ.OFF. C94C §34	02/22/2002

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY

DOCKET NUMBER
0323CR003455

Trial Court of Massachusetts
District Court Department



DATE OF ASSIGNMENT	NAME OF ASSIGNING JUDGE	NO. OF COUNTS
05/04/2004	Hon. John M. Payne, Jr.	4

COURT NAME AND ADDRESS
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

REGINALD C SMITH
27 LORING STREET
SPRINGFIELD, MA 01105

0-

DEFENDANT DATE OF BIRTH	DEFENDANT PHONE
01/17/1962	0-
ATTORNEY BBO NUMBER	ATTORNEY PHONE
290140	(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108

INCARCERATION STATUS IN THIS CASE BAIL

DEFENDANT IN CUSTODY

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	90/23/D	LICENSE SUSPENDED, OP MV WITH c90 §23	03/29/2003
2	90/9/B	UNREGISTERED MOTOR VEHICLE * c90 §9	03/29/2003
3	90/34J	UNINSURED MOTOR VEHICLE c90 §34J	03/29/2003
4	90/23/G	NUMBER PLATE VIOLATION TO CONCEAL ID c90 §23	03/29/2003

Robert E. Leahy
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : FOR INDIGENT DEFENDANT

AUTHORIZED SIGNATURE
X

Postmarked Date 05-24-15
To: B. J. Leahy, Esq.
Fax No: (617) 988-8495
From: Chris Cosby
Phone: (413) 732-7110

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0323CR009592

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
1

COURT NAME AND ADDRESS
**SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002**

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED
**REGINALD C SMITH
27 LORING STREET
SPRINGFIELD, MA 01105**

()-

DEFENDANT DATE OF BIRTH
01/17/1962

DEFENDANT PHONE
()-

ATTORNEY BBO NUMBER
290140

ATTORNEY PHONE
(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED
**WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108**

INCARCERATION STATUS IN THIS CASE BAIL
DEFENDANT IN CUSTODY \$1,000.00

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)
OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/34/D	DRUG, POSSESS CLASS B, SUBSQ.OFF. C94C §34	10/03/2003

Robert E. Dean
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR004018

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 1	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED COREY L SMITH 30 BELMONT AVE SPRINGFIELD, MA			0-	
			DEFENDANT DATE OF BIRTH 02/10/1970	DEFENDANT PHONE 0-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (817)988-8304
			NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108	
			INCARCERATION STATUS IN THIS CASE DEFENDANT IN CUSTODY HAMPDEN HOUSE OF CORRECTION	BAIL
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL) OTHER	
NEXT EVENT ARRAIGNMENT		NEXT EVENT DATE & TIME 05/05/2004 08:00 a.m.	ROOM / SESSION 1 st Session	

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	276/20A	FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A	05/03/2004

Robert E. Reina
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR000579

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
1

COURT NAME AND ADDRESS

**SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002**

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

**DEBRA STAPLES
166 KING STREET
SPRINGFIELD, MA**

()-

DEFENDANT DATE OF BIRTH

07/29/1956

DEFENDANT PHONE

()-

ATTORNEY BBO NUMBER

290140

ATTORNEY PHONE

(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

**WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108**

INCARCERATION STATUS IN THIS CASE

BAIL

DEFENDANT IN CUSTODY

\$500.00

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

OTHER

NEXT EVENT

NEXT EVENT DATE & TIME

ROOM/SESSION

ARRAIGNMENT

05/05/2004 08:00 a.m.

1st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	272/53/A	NIGHTWALKER, COMMON c272 §53	01/21/2004

Robert E. Ben
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL**
ATTORNEY COPY

DOCKET NUMBER
0223CR006689

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 2
----------------------------------	--	--------------------

COURT NAME AND ADDRESS
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

CHARLES FOLEY
11 MYRTLE STREE
SPRINGFIELD, MA

()-

DEFENDANT DATE OF BIRTH

04/26/1980

DEFENDANT PHONE

()-

ATTORNEY BBO NUMBER

290140

ATTORNEY PHONE

(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108

INCARCERATION STATUS IN THIS CASE

BAIL

DEFENDANT IN CUSTODY

\$100.00

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/34/G	DRUG, POSSESS CLASS D c94C §34	06/19/2002
2	266/28/F	MOTOR VEH, RECEIVE STOLEN c266 §28(a)	06/19/2002

Robert E. Fera

CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003961

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
2

COURT NAME AND ADDRESS
**SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002**

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED
**DOUGLAS LEWIS
194 HANCOCK ST
SPRINGFIELD, MA 01109**

()-

DEFENDANT DATE OF BIRTH
06/07/1971

DEFENDANT PHONE
()-

ATTORNEY BBO NUMBER
290140

ATTORNEY PHONE
(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED
**WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108**

INCARCERATION STATUS IN THIS CASE **BAIL**
DEFENDANT IN CUSTODY \$500.00

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)
OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	265/13A/B	A&B c265 §13A(a)	04/30/2004
2	94C/34/G	DRUG, POSSESS CLASS D c94C §34	04/30/2004

Robert E. Feni
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003993

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
1

COURT NAME AND ADDRESS
**SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002**

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED
**KEITH E TASKEY
968 BERKSHIRE AVENUE
SPRINGFIELD, MA**

()-

DEFENDANT DATE OF BIRTH
05/24/1959

DEFENDANT PHONE
()-

ATTORNEY BBO NUMBER
290140

ATTORNEY PHONE
(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED
**WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108**

INCARCERATION STATUS IN THIS CASE **BAIL**
DEFENDANT IN CUSTODY

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

OTHER

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 08:00 a.m.	1st Session

FIRST FIFTEEN OFFENSE COUNTS

<u>COUNT</u>	<u>CODE</u>	<u>OFFENSE DESCRIPTION</u>	<u>OFFENSE DATE</u>
1	265/15A/A	A&B WITH DANGEROUS WEAPON c265 §15A(b)	05/02/2004

Robert E. Rein

CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
9423CR02421

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
1

COURT NAME AND ADDRESS

**SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002**

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

**DANA J JONES
74 RALPH STREET
SPRINGFIELD, MA**

()-

DEFENDANT DATE OF BIRTH

10/08/1971

DEFENDANT PHONE

()-

ATTORNEY BBO NUMBER

290140

ATTORNEY PHONE

(617)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

**WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108**

INCARCERATION STATUS IN THIS CASE

BAIL

DEFENDANT IN CUSTODY

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

OTHER

NEXT EVENT

NEXT EVENT DATE & TIME

ROOM / SESSION

PROBATION VIOLATION HEARING

05/05/2004 09:00 a.m.

1st Session

FIRST FIFTEEN OFFENSE COUNTS

<u>COUNT</u>	<u>CODE</u>	<u>OFFENSE DESCRIPTION</u>	<u>OFFENSE DATE</u>
1	90/24/P	USE MV WITHOUT AUTHORITY c90 §24(2)(a)	02/04/1991

Robert E. Fern
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003968

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 2	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED DANA JONES 62 BRISTOL ST SPRINGFIELD, MA 01109			0-	
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			DEFENDANT DATE OF BIRTH 10/08/1971	DEFENDANT PHONE 0-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
			INCARCERATION STATUS IN THIS CASE BAIL	
			DEFENDANT IN CUSTODY	
			HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL)	
			OTHER	
NEXT EVENT		NEXT EVENT DATE & TIME		ROOM / SESSION
ARRAIGNMENT		05/05/2004 08:00 a.m.		1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	209A/7	ABUSE PREVENTION ORDER, VIOLATE c209A §7	05/01/2004
2	275/2	THREAT TO COMMIT CRIME c275 §2	05/01/2004

Robert E. Dean
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL**
ATTORNEY COPY

DOCKET NUMBER
0423CR003989

**Trial Court of Massachusetts
District Court Department**



**NOTICE OF ASSIGNMENT OF
COUNSEL**
ATTORNEY COPY

DOCKET NUMBER
0423CR003962

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 1	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED ANGEL RIVERA 386 FRANKLIN STREET THIRD FLOOR SPRINGFIELD, MA			0-	DEFENDANT DATE OF BIRTH 09/11/1979
			DEFENDANT PHONE ()-	ATTORNEY BBO NUMBER 290140
			ATTORNEY PHONE (617)988-8304	
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE DEFENDANT IN CUSTODY HAMPDEN HOUSE OF CORRECTION PURPOSE OF ASSIGNMENT (IF POST-TRIAL)	BAIL
NEXT EVENT ARRAIGNMENT		NEXT EVENT DATE & TIME 05/05/2004 09:00 a.m.	ROOM / SESSION 1 st Session	

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	265/13A/B	A&B c265 §13A(a)	05/03/2004

Robert E. Dineen
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003982

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
5

COURT NAME AND ADDRESS
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

JOSEPH POLAMTIER
181 CHESTNUT ST
SPRINGFIELD, MA

()-

DEFENDANT DATE OF BIRTH
03/08/1967

DEFENDANT PHONE
()-

ATTORNEY BBO NUMBER
290140

ATTORNEY PHONE
(817)988-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108

INCARCERATION STATUS IN THIS CASE BAIL
DEFENDANT IN CUSTODY \$2,500.00

HAMPDEN HOUSE OF CORRECTION

PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM/SESSION
ARRAIGNMENT	05/05/2004 09:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32A/E	DRUG, DISTRIBUTE CLASS B c94C §32A(a)	04/30/2004
2	94C/32C/C	DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a)	04/30/2004
3	269/10/G	FIREARM WITHOUT FID CARD, POSSESS c269 §10(h)	04/30/2004
4	94C/32E/A	COCAINE, TRAFFICKING IN c94C §32E(b)	04/30/2004
5	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	04/30/2004

Robert E. Quinn

CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003989

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT
05/04/2004

NAME OF ASSIGNING JUDGE
Hon. John M. Payne, Jr.

NO. OF COUNTS
7

COURT NAME AND ADDRESS
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103-2002

NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED

MARIA ALVARADO
95 FEDERAL STREET
APT. 2B
SPRINGFIELD, MA

0-

DEFENDANT DATE OF BIRTH
07/21/1954

DEFENDANT PHONE

ATTORNEY BBO NUMBER
290140

ATTORNEY PHONE
(617)888-8304

NAME AND ADDRESS OF ATTORNEY ASSIGNED

WILLIAM JOSEPH LEAHY
Comm For Public Counsel Services
44 Bromfield Street
BOSTON, MA 02108

INCARCERATION STATUS IN THIS CASE BAIL
DEFENDANT IN CUSTODY \$15,000.00

HAMPDEN HOUSE OF CORRECTION
PURPOSE OF ASSIGNMENT (IF POST-TRIAL)

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 09:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32/A	DRUG, DISTRIBUTE CLASS A c94C §32(a)	04/27/2004
2	94C/32/A	DRUG, DISTRIBUTE CLASS A c94C §32(a)	04/28/2004
3	94C/32/C	DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a)	04/30/2004
4	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	04/30/2004
5	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	04/28/2004
6	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	04/30/2004
7	276/20A	FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A	04/30/2004

Robert E. Deina
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003987

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 5	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED JONATHAN MARRERO 14 QUEBEC ST SPRINGFIELD, MA			0-	DEFENDANT DATE OF BIRTH 12/03/1981
			DEFENDANT PHONE 0-	ATTORNEY BBO NUMBER 290140
			ATTORNEY PHONE (617)988-8304	INCARCERATION STATUS IN THIS CASE DEFENDANT IN CUSTODY
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			BAIL \$2,500.00	HAMPDEN HOUSE OF CORRECTION
PURPOSE OF ASSIGNMENT (IF POST-TRIAL)				

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 09:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	94C/32E/A	COCAINE, TRAFFICKING IN c94C §32E(b)	04/30/2004
2	94C/32C/C	DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a)	04/30/2004
3	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J	04/30/2004
4	269/10/G	FIREARM WITHOUT FID CARD, POSSESS c269 §10(h)	04/30/2004
5	268/34A	FALSE NAME/SSN, ARRESTEE FURNISH c268 §34A	04/30/2004

Robert E. Venn
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003980

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 2	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED OMAR HALL 43 EUREKA STREET SPRINGFIELD, MA			0-	
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			DEFENDANT DATE OF BIRTH 09/14/1979	DEFENDANT PHONE ()-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
			INCARCERATION STATUS IN THIS CASE DEFENDANT IN CUSTODY	BAIL \$1,000.00
			HAMPDEN HOUSE OF CORRECTION PURPOSE OF ASSIGNMENT (IF POST-TRIAL)	
NEXT EVENT ARRAIGNMENT		NEXT EVENT DATE & TIME 05/05/2004 09:00 a.m.	ROOM / SESSION 1 st Session	

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	266/30/A	LARCENY OVER \$250 c266 §30(1)	05/01/2004
2	266/30/A	LARCENY OVER \$250 c266 §30(1)	05/01/2004

Robert E. Fenn

CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01103

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

**NOTICE OF ASSIGNMENT OF
COUNSEL
ATTORNEY COPY**

DOCKET NUMBER
0423CR003960

**Trial Court of Massachusetts
District Court Department**



DATE OF ASSIGNMENT 05/04/2004	NAME OF ASSIGNING JUDGE Hon. John M. Payne, Jr.	NO. OF COUNTS 1	COURT NAME AND ADDRESS SPRINGFIELD DISTRICT COURT 50 STATE STREET SPRINGFIELD, MA 01103-2002	
NAME AND ADDRESS OF PERSON FOR WHOM COUNSEL IS ASSIGNED LUIS A OSORIO 2480 SW 155TH LANE OKALA, FL			0-	
			DEFENDANT DATE OF BIRTH 06/13/1978	DEFENDANT PHONE 0-
			ATTORNEY BBO NUMBER 290140	ATTORNEY PHONE (617)988-8304
NAME AND ADDRESS OF ATTORNEY ASSIGNED WILLIAM JOSEPH LEAHY Comm For Public Counsel Services 44 Bromfield Street BOSTON, MA 02108			INCARCERATION STATUS IN THIS CASE BAIL DEFENDANT IN CUSTODY	
			HAMPDEN HOUSE OF CORRECTION	
			PURPOSE OF ASSIGNMENT (IF POST-TRIAL)	

NEXT EVENT	NEXT EVENT DATE & TIME	ROOM / SESSION
ARRAIGNMENT	05/05/2004 09:00 a.m.	1 st Session

FIRST FIFTEEN OFFENSE COUNTS

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	278/20A	FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A	05/02/2004

Robert E. Peña
CLERK MAGISTRATE
SPRINGFIELD DISTRICT COURT
50 STATE STREET
SPRINGFIELD, MA 01104

The Court has appointed the above attorney or organization to represent the person named above.

Basis for Appointment : **FOR INDIGENT DEFENDANT**

AUTHORIZED SIGNATURE

X

Attachment 2

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

Commonwealth
V.

SPRINGFIELD DISTRICT COURT

MOTION TO ASSIGN CERTIFIED PRIVATE COUNSEL

Now comes the Committee for Public Counsel Services on behalf of this defendant and requests this Honorable Court to enforce his right to counsel by assigning a CPCS-certified private attorney to represent him in this matter.

This defendant's right to counsel is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 12 of the Declaration of Rights in the Massachusetts Constitution. It is effective at "the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information or arraignment. Commonwealth v. Smallwood, 379 Mass. 878, 884 (1980), quoting Kirby v. Illinois, 406 U. S. 682, 689 (1972). It need hardly be said that a purported assignment of the chief counsel of the Committee for Public Counsel Services, who bears overall responsibility under G.L. ch. 211D for the provision of competent representation of some 250,000 indigent persons annually, to provide case representation to an unknown number of individual defendants in this Court does not fulfill any of these defendants' constitutional right to counsel.

This Court has the authority and the responsibility under its inherent authority to enforce the law and the constitution, see e.g. O'Coin's, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507 (1972); and under the "exceptional circumstances" provision of Supreme Judicial Court Rule 3:10, Section 5, to take such action as is necessary to provide competent counsel to assist this defendant.

Should this Court deny this motion, CPCS respectfully requests that the defendant be released on his personal recognizance forthwith, and that these criminal proceedings be stayed until counsel has been appointed, or in the alternative until his request for counsel has been heard and determined by our appellate courts.

THE COMMITTEE FOR PUBLIC COUNSEL SERVICES
By its Chief Counsel,

William J. Leahy BBO #290140
44 Bromfield Street Boston, MA 02108



Public defenders absent

Tuesday, May 04, 2004

By **BUFFY SPENCER**
bspencer@repub.com

SPRINGFIELD - District Court Judge John M. Payne Jr. repeatedly told defendants standing before him at arraignments yesterday that there were no public defenders available to represent them.

Over and over he used such words as "hopefully" and "if" while entering innocent pleas for the defendants and explaining what was to occur in their cases.

Whether public defenders will be available today remains in question. Lawyers willing to take court appointments in district and superior court have been seeking an increase in their hourly wage, but neither Gov. W. Mitt Romney nor the Legislature have supported a change.

In court yesterday, Payne told those held on bail that they will be returned to court today and "hopefully" lawyers will be available to be appointed to argue that they be released on no bail or a reduced bail amount.

In other cases defendants were released on their own recognizance and told to come back for pretrial conferences in early June, when "hopefully" lawyers will be available.

Lawyer Mark L. Hare of Westfield said nearly 50 defendants due to be arraigned yesterday in district court were held on bail, and no lawyers are signed up to take appointments this week.

Hare, a member of the Massachusetts Association of Court Appointed Attorneys, said the current hourly rate for public defenders is \$30 in district court, \$39 in superior court and \$54 in murder cases. The sought-after raise is to \$60 in district court, \$90 in superior court and \$120 in murder cases.

Hare said lawyers willing to take appointments were available yesterday if the judge agreed to the \$60 rate in a case. He said several "heroic judges" in Western Massachusetts have recently ordered the state to pay the \$60 rate in individual cases.

When acting as public defenders the private lawyers are paid with state money distributed by the Committee for Public Counsel Services.

Lawyer Rosemary J. Cooper of East Longmeadow filed a motion yesterday requesting the court pay her at the \$60 rate for cases assigned that day, or at least those involving felony charges. The motion was denied, she said, so she did not agree to take any cases.

"At the current rates, the compensation paid to lawyers who do court-appointed work is the second or third lowest in the nation," she wrote in the motion. The existing rate is "hardly enough for the lawyers who accept the cases to support their office overhead, much less themselves and their families."

Anthony C. Bonavita, president of Hampden County Bar Advocates, said the dwindling number of lawyers willing to take appointments means those who do have burdensome caseloads. "Especially in district court, it doesn't take too long to get too many cases," he said.

Hare said that hoping lawyers will be available at a future court date is no solution. "The problem will compound itself again and again," he said.

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Poor held as lawyers stop taking new cases

The Boston Globe

By Jonathan Saltzman, Globe Staff | May 5, 2004

As many as 50 defendants waited behind bars yesterday because none of the private lawyers who represent the poor would accept new cases in Springfield District Court this week, according to some of the lawyers and the Committee for Public Counsel Services, the state public defender agency.

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Boston.....	\$198	San Francisco.....	\$258
Washington, D.C.	\$218	Denver.....	\$278

Fares are one-way based on r/t purchase. Taxes & fees extra.

Anthony C. Bonavita, president of Hampden County Bar Advocates Inc., which has a contract with the committee to provide court-appointed lawyers in the Springfield area, said the state's hourly pay rates are so paltry that the number of attorneys in the group who are willing to handle such cases has plunged from 150 to about 110 in the past two years.

As a result, up to 50 defendants awaiting hearings on bail or dangerousness are languishing at the Hampden County Jail in Ludlow.

For months, bar advocates across the state and the CPCS have been locked in a bitter battle with

Governor Mitt Romney over pay rates. The hourly rates for court-appointed private lawyers are \$30 for district court cases, \$39 for superior court cases, and \$54 for murder cases. Those rates have stayed fairly constant for two decades and have not changed at all since 1997.

Last November, lawyers in Essex County courts, angered by Romney's decision to cut their funding 18 percent, staged a week of wildcat strikes, provoking the governor's wrath and calls for disciplinary action.

But Bonavita said court-appointed lawyers in Springfield District Court did not stage a strike this week. "There just aren't enough court-appointed attorneys in the system right now to handle the volume of cases coming through," he said.

Rosemary J. Cooper, an East Longmeadow lawyer, said she has at least 50 open cases in District Court and cannot afford to take on any more at \$30 an hour. She filed a motion Monday requesting that the Springfield court pay her \$60 an hour. When the court denied the request,

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she declined to accept additional cases.

"I don't like to leave the court stranded," she said. "But it isn't fair for me to suffer a hardship, to fulfill . . . the state's obligation under the Sixth Amendment," she said, referring to the constitutional right to defense counsel.

District Court Judge John M. Payne Jr. yesterday assigned William J. Leahy, chief counsel for the CPCS, to personally represent at least 14 of the jailed defendants, according to Anthony J. Benedetti, general counsel for the committee. Leahy plans to appear before the judge today in Springfield. ■

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE
NO.

NATHANIEL LAVALLEE, CORDELLE SIMMONDS, ISSAC VERDEJO, JAMAR T. GILLERSON, ARNOLD FREEMAN A.K.A. JEFFREY THOMPSON, HAROLD VARGAS, REGINALD C. SMITH, COREY L. SMITH, DEBRA STAPLES, CHARLES FOLEY, DOUGLAS LEWIS, KEITH E. TAKEY, DANA J. JONES, DANA JONES, ANGEL RIVERA, JOSEPH POLAMTIER, MARIA ALVARADO, JONATHAN MARRERO, OMAR HALL, LUIS A. OSORIO, OTHER UNKNOWN INDIGENT CRIMINAL DEFENDANTS,
AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF WILLIAM J. LEAHY

I, William J. Leahy, hereby state that:

1. I am the Chief Counsel of the Committee for Public Counsel Services (CPCS). I was employed as a staff public defender with the Massachusetts Defenders Committee from 1974 to 1984. From July, 1984 through June, 1991 I served as Deputy Chief Counsel for the CPCS Public Counsel (Defender) Division. I have served in my current capacity since July 1, 1991.
2. My responsibilities as Chief Counsel include "the overall supervision of the workings of the various divisions of the committee." G.L. ch. 211D, section 13. This includes oversight of the performance of approximately 240 employees, 2,500 assigned private counsel, and the provision of competent representation in close to 250,000 cases yearly.
3. One of my principal duties is to secure adequate funding so that our attorneys, both salaried staff and assigned private counsel, are able to provide competent representation to their clients.
4. During the almost twenty year history of CPCS, there has been only a single, modest increase in the hourly rates paid to assigned private counsel. That was in 1996 for most cases, and 1997 for Superior Court criminal cases. These

slightly increased rates – for criminal cases, they are \$30 per hour for District Court jurisdiction cases, \$39 for Superior Court jurisdiction, and \$54 for murder cases – did not approach the authorized hourly rates which CPCS had established in May, 1994, of \$50, \$65, and \$85 per hour for the three categories of criminal cases.

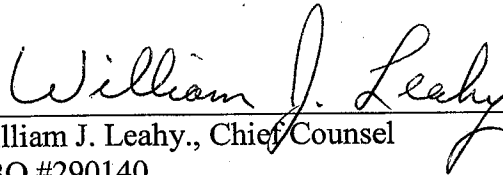
5. Every year, CPCS advocates in the Commonwealth's budget process for the funding needed to support its authorized rates. In the fiscal year 2001 budget process, CPCS also presented a three-year plan to provide a phased-in increase, which in its first year would have increased all hourly rates by three dollars. The funding for this increase passed one Legislative branch, but did not survive in the budget conference.
6. Beginning with the fiscal year 2002 budget, the CPCS budget lines which support staff operations suffered three consecutive years of deep budget cuts, which resulted in the severe staff counsel reductions described in Deputy Chief Counsel Andrew Silverman's affidavit. These deficiencies, in turn, increased the number of cases which had to be assigned to private counsel certified by CPCS to accept case assignments.
7. As recounted in the affidavits of Mr. Silverman and Private Counsel Division Deputy Chief Counsel Patricia A. Wynn, there has been a substantial reduction in the number of staff counsel and available private counsel in recent years, and a rapidly accelerating dissatisfaction among private counsel with the stagnant and inadequate hourly rates they receive. More than two years ago, I publicly described the assigned counsel system as being "in absolute, dire threat," and approaching a "serious crisis." See "Attorneys shun work for public over fees", Boston Globe (February 16, 2002) at B1.
8. On February 3, 2003, in the *Report to the Legislature on the Committee for Public Counsel Services*, I concluded with the statement that "[t]here is a compelling need to increase substantially the hourly rates of compensation paid to assigned counsel who represent indigent CPCS clients."
9. On February 18, 2003, in a Boston Herald op-ed article marking the 40th anniversary of the landmark right to counsel decision in Gideon v. Wainwright, I concluded by saying that "Massachusetts, which once breathed life into the Sixth Amendment right to counsel for poor people, is now suffocating that right."
10. On March 8, 2004, in the fiscal year 2004 *Report to the Legislature*, I again emphasized that "[m]eaningful increases in the hourly rates paid to private counsel...are fully justified and long overdue."
11. With respect to the ongoing shortage of available private counsel in Hampden County, I am satisfied that I and my staff and the staff of the Hampden County

Bar Advocate Program have done everything within our power to provide every defendant a trained, dedicated and competent attorney. Certain of our efforts are recounted in my April 20, 2004 letter to Superior Court Judges Sweeney and Velis and the attachments thereto, all of which is attached as Exhibit A to this affidavit. Unfortunately, my request that the judges convene a summit meeting of all responsible parties concerned with prosecution, defense, adjudication and incarceration to consider comprehensive solutions was ignored. Additional documentation of our efforts is found in the affidavits which have been filed with this petition.

12. On April 26, 2004, in a letter I wrote to House Speaker Thomas M. Finneran, I made reference to the Hampden County counsel crisis in urging an increase in the hourly rates in the House of Representatives fiscal year 2005 budget.
13. After the House of Representatives, on or about April 29, created but did not adequately fund a twelve million dollar Indigent Counsel Salary Enhancement Trust Fund (SETF) in its final budget, I wrote on May 3, 2004 to the Senate President, the House Speaker, and the Chairmen of the House and Senate Committees on Ways and Means with a specific proposal to provide full funding for the SETF. A copy of this letter is attached hereto as Appendix B.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 6th

DAY OF MAY, 2004.



William J. Leahy., Chief Counsel
BBO #290140

COMMITTEE FOR PUBLIC COUNSEL SERVICES
44 Bromfield Street, Suite 200
Boston, MA 02108
(617) 482-6212

Exhibit A



WILLIAM J. LEAHY
CHIEF COUNSEL

The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108

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PATRICIA A. WYNN
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

WRITER'S DIRECT DIAL NUMBER

April 20, 2004

Honorable Constance M. Sweeney
Associate Justice
Hampden Superior Court
P.O. Box 559
Springfield, MA 01102-0559

Honorable Peter A. Velis
Associate Justice
Hampden Superior Court
P.O. Box 559
Springfield, MA 01102-0559

Re: Declaration of Counsel Emergency in Hampden County

Dear Judge Sweeney and Judge Velis:

The shortage of counsel who are available to accept assignments to represent indigent persons facing criminal charges in Hampden County has reached the crisis point. In recent years, the size of the Committee for Public Counsel Services (CPCS) public defender office has been reduced, due to three consecutive years of deep budget cuts in the CPCS budget line which funds staff attorney positions. At the same time, the longstanding failure to fund higher hourly rates for assigned private counsel has induced many experienced attorneys who possess CPCS certification for felony cases in the Superior Court to reduce the number of cases they are willing to accept, or to decline cases altogether. Under these very difficult circumstances, not of our making, my staff and the representatives of the Hampden County Bar Advocate program (HCBA), with which CPCS contracts to provide representation for indigent criminal defense

Honorable Constance M. Sweeney
Honorable Peter A. Velis
Page 2
April 20, 2004

representation in Hampden County, have worked assiduously to provide lawyers to persons who need them and are entitled to their assistance. Our understaffed public defender office is extremely close to its full authorized case capacity. We have also worked very hard to persuade lawyers in private practice to accept assignments. Nonetheless, the frustration felt by the private counsel bar over hourly rates of pay which pale beside those which these same attorneys charge in their private practices, as well as the striking disparity between the rates paid for CPCS work and the far greater hourly rates the Commonwealth of Massachusetts pays to private attorneys under contracts executed by the Executive Branch of government, have significantly reduced the availability of counsel to defendants entitled to representation.

During the past two months, Judge Sweeney has issued three separate Orders to CPCS to assign counsel in a total of six pending cases. When the very first such Order was issued, in February, I immediately filed an Emergency Request for Three Public Defenders in Hampden County with the House and Senate Committees on Ways and Means. Please see my letter of February 23, 2004, attached hereto. That request did not receive favorable consideration. We have hired one additional public defender, who will begin work on or about April 30, 2004.

Also in February, on the 26th, I convened and attended a meeting in Springfield with Hampden County chief public defender Andrew Klyman, Hampden County Bar Advocates (HCBA) president Anthony Bonavita, CPCS deputy chiefs Andrew Silverman and Patricia Wynn, and CPCS Private Counsel Division attorney Nancy Bennett. The aim of this meeting was to assure myself that we at CPCS were doing, and would do, everything within our abilities to provide counsel to every indigent defendant who is entitled by law to the guiding hand of counsel.

Also in February, on the 25th, I sought a meeting with Judge Sweeney to consider mechanisms for alleviating the then-developing counsel crisis. I did not receive a response to my letter of that date, a copy of which is also attached.

Despite our success in persuading two attorneys to represent the persons who were the subject of Judge Sweeney's April 13 orders, there remained as of Friday, April 16, 2004, several persons who are held in lieu of bail in Hampden County, facing Superior Court jurisdiction charges, who are entitled to counsel and for whom we have been unable to assign counsel.

Honorable Constance M. Sweeney
Honorable Peter A. Velis
Page 3
April 20, 2004

Every one of these persons is being detained in flagrant violation of his or her right to counsel under the Constitutions of the United States and the Commonwealth of Massachusetts.

This crisis was not created by the Committee for Public Counsel Services, nor by the judiciary; and it is not capable of successful resolution by those two entities alone.

On behalf of CPCS, I therefore state publicly what many in the criminal justice system already know all too well: we are in the midst of a full-blown indigent counsel emergency, an emergency which has resulted in the incarceration of individuals in violation of their most fundamental constitutional right, the right to counsel. I urge the following specific actions:

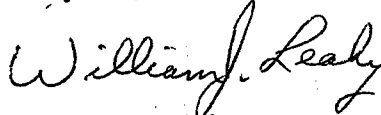
1. I ask the appropriate Court having jurisdiction of the case against any of the individuals named on the HCBA list who is held in lieu of bail and has not been assigned an attorney, to bring that person into court for an emergency bail hearing, which takes into account as a critical factor the fact that each person is without legal representation, and there is a recurring shortage of Superior Court certified attorneys in the county. If counsel cannot be procured to represent these unfortunate individuals for purposes of these bail hearings, I will make every effort to represent them myself.
2. I ask Judges Sweeney and Velis to convene, at the earliest possible date, a summit meeting of all responsible parties to address, in the most comprehensive and effective way possible, the crisis of persons being jailed without counsel. Specifically, this meeting should include at least the following parties: CPCS; HCBA; the District Attorney for Hampden County; the Hampden County Sheriff; the Chief Probation Officers from the Superior Court and the Hampden County District Courts; and the Clerk-Magistrate from each such court.

I would further suggest that appropriate Legislative leaders be invited to attend, or send representatives to this meeting. Working together--and only by working together--we may be able to address the complex systemic issues, including the chronic inadequacy of funding to enforce the right to counsel, which have caused these ongoing and intolerable violations of the Constitution.

Honorable Constance M. Sweeney
Honorable Peter A. Velis
Page 4
April 20, 2004

Thank you for your prompt response to this emergency request.

Very truly yours,



William J. Leahy
Chief Counsel

cc: Superior Court Chief Justice Suzanne V. DelVecchio
Chief Justice for Administration and Management Robert A. Mulligan
Hampden Superior Court Clerk of Courts Marie G. Mazza
Hampden Superior Court Chief Probation Officer Michael S. Ghazil
Chicopee District Court Presiding Justice Mary E. Hurley-Marks
Chicopee District Court Clerk-Magistrate Paul M. Kozikowski
Chicopee District Court Chief Probation Officer Michael J. Placzek
Holyoke District Court Presiding Justice William B. McDonough
Holyoke District Court Clerk-Magistrate Manuel A. Moutinho, III
Holyoke District Court Chief Probation Officer Peter Heymanns
Palmer District Court Presiding Justice Patricia T. Martinelli
Palmer District Court Clerk-Magistrate E. Donald Riddle
Palmer District Court Chief Probation Officer David C. Ellison
Springfield District Court Presiding Justice Robert F. Kumor, Jr.
Springfield District Court Clerk-Magistrate Robert E. Fein
Springfield District Court Chief Probation Officer John M. Morganstern
Westfield District Court Presiding Justice Philip A. Contant
Westfield District Court Clerk-Magistrate Carol J. Kantany-Casartello
Westfield District Court Chief Probation Office
Hampden County District Attorney William M. Bennett
Hampden County Sheriff Michael J. Ashe, Jr.



The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108

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PRIVATE COUNSEL DIVISION

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

February 23, 2004

WRITER'S DIRECT DIAL NUMBER

Honorable John H. Rogers
Chairman
House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

Honorable Therese Murray
Chairman
Senate Committee on Ways and Means
State House, Room 212
Boston, MA 02133

Re: Emergency Request for Three Public Defenders in Hampden County

Dear Chairman Rogers and Chairman Murray:

The assigned counsel shortage in criminal cases in Hampden County, which has resulted from inadequate hourly rates for private counsel and reduced public defender staffing, has reached a crisis point. As of today, approximately thirty-six indigent defendants, charged with Superior Court-level felony offenses, are being held in lieu of bail without counsel, in outright violation of their undoubted right to the Assistance of Counsel under the Sixth Amendment to the United States Constitution and Article Twelve of the Massachusetts Declaration of Rights. Some have been held for as long as three months, despite the efforts of the judges, the Committee for Public Counsel Services (CPCS), and the Hampden County Bar Advocate Program.

The long-term solution to this counsel shortage lies in increasing the compensation for CPCS staff attorneys, as proposed in our FY05 budget request, and for assigned private counsel, as proposed in our budget request and in H.4321, which has received a favorable recommendation by the Judiciary Committee. But resolution of the immediate crisis, as the attached order from Judge Sweeney makes clear, cannot await the enactment of a new budget and the arrival of a new fiscal year.

I therefore request funding to fill three vacant public defender offices in our existing Springfield location by hiring three public defenders and a secretary, effective as of April 1, 2004. The addition of these full-time public defenders would go a long way toward alleviating

Honorable John H. Rogers
Honorable Therese Murray
Page 2
February 23, 2004

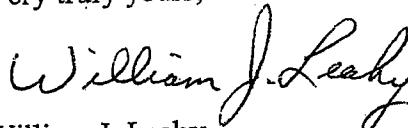
the current shortage, and provide counsel to indigent persons charged with crime who are entitled to legal representation. Since the offices, desks and equipment for these positions are already in place, the cost is composed of salary and benefits only, as follows:

- 3 Superior Court level attorneys @ \$50,000 annually
(FY04 cost = \$37,500)
- 1 secretary/paralegal @ \$25,000 annually
(FY04 cost = \$ 6,250)

Thus the total FY04 cost would be \$43,750.

Thank you for your favorable consideration of this emergency proposal.

Very truly yours,


William J. Leahy
Chief Counsel

Attachment

cc: Senate President Robert E. Travaglini
Speaker of the House of Representatives Thomas M. Finneran
Supreme Judicial Court Chief Justice Margaret H. Marshall
Chief Justice for Administration and Management Robert A. Mulligan
Superior Court Department Chief Justice Suzanne V. DeVecchio
District Court Department Chief Justice Samuel E. Zoll

The Commonwealth of Massachusetts
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William J. Leahy
Chief Counsel
Patricia A. Wynn
Deputy Chief Counsel
Private Counsel Division
Andrew Silverman
Deputy Chief Counsel
Public Defender Division

February 25, 2004

Honorable Constance M. Sweeney
Associate Justice
Hampden Superior Court
P.O. Box 559
Springfield MA 01102-0559

Re: Commonwealth v. Kelly Wheeler
Commonwealth v. Jason Paniagua
Commonwealth v. Luis Cabrera

Dear Judge Sweeney,

I am pleased to report that we have been able to assign counsel for the above-named defendants, in compliance with your orders of February 19, 2004. Through the combined efforts of Attorney Klyman and Attorney Bonavita and their offices, we have also been able to assign counsel for several additional defendants who have been without counsel.

Furthermore, on Monday, February 23 I filed an emergency request for supplemental funding for three additional public defenders in our Springfield office, upon which I urged speedy consideration at yesterday's joint Ways and Means budget hearing in Worcester. In my testimony I highlighted the Hampden County counsel crisis, and urged approval of the CPCS proposal for significant increases in private assigned counsel and CPCS staff counsel compensation.

Notwithstanding these positive steps, the counsel crisis is a long way from being resolved. The public defender office is fast approaching its maximum caseload limit, which I have personally established after consultation with Attorney Klyman and statewide public defender head Andrew Silverman, with full consideration of the shortage of private counsel. That capacity is essential to our staff attorneys' compliance with fundamental professional and

ethical obligations and their responsibility to provide effective representation to every one of their clients; and I will not shirk my duty to enforce it. The capacity of the private bar is uncertain, although we are doing everything we can to persuade attorneys to accept assignments to represent defendants who are now without counsel. I fear, however, that private counsel availability may continue to be limited until such time as the compensation levels have been raised.

In order to ensure that everything which can be done is being done to provide counsel for indigent defendants, Patricia Wynn and Andrew Silverman and I will meet tomorrow at 11:30 a.m. in Springfield with Attorneys Klyman and Bonavita and their staffs. We want to assure ourselves that we are leaving no stone unturned in our effort to provide a Superior Court certified attorney to every defendant who is entitled to the assistance of counsel.

We would very much appreciate an opportunity to hear your views and suggestions for alleviating this crisis as well. If it is convenient, we would be happy to meet with you, perhaps during the lunch recess tomorrow, for this purpose. In any case, I will provide you and Judge Velis with a status report after our meeting with our Springfield private and public counsel leaders.

Very Truly Yours,



William J. Leahy
Chief Counsel

cc: Honorable Peter A. Velis, Associate Justice, Hampden Superior Court
Chief Justice for Administration and Management Robert A. Mulligan
Superior Court Chief Justice Suzanne V. DelVecchio
Hampden County Bar Advocates, Inc. President Anthony C. Bonavita
Hampden County CPCS Attorney-in-Charge Andrew M. Klyman
CPCS Deputy Chief Counsel, Private Counsel Division, Patricia Wynn
CPCS Deputy Chief Counsel, Public Defender Division, Andrew Silverman

cases needing superior court certified attys.

Subject: cases needing superior court certified attys.

From: "Hampden County Bar Advocates" <hampdenba@publiccounsel.net>

Date: Fri, 16 Apr 2004 17:36:37 -0400

To: <hampdenba@publiccounsel.net>

Listed below are cases needing to be assigned to superior court certified attorneys. If you are able to take ANY of these cases, please call us (732-7110).

Thank you for your consideration.

Chris

Holyoke District Court

Charlie Justino Vega; 04-28-04 PTH; #0417CR001297; Armed robbery;
Bail: \$10,000 cash, \$100,000 surety; (co-def.: Jose Montanez);
(arr. 03-31).

Jose Montanez; 04-28-04 PTH; #0417CR001296; Armed robbery;
Bail:
\$5,000 cash, \$50,000 surety; (co-def.: Charlie Justino Vega);
(arr. 03-31).

Julio Cesar Rodriguez Morales; 04-15-04 PTH; #0417CR0670; Dist. class
A, conspiracy, school zone; Bail: \$10,000 cash, \$25,000 surety;
(co-defs.: Joel J. Rodriguez, Jose Rodriguez); (arr. 03-19).

Joel J. Rodriguez; 04-15-04 PTH; #0417CR0674; Trespass, poss. class
A, poss. to dist. class A, conspiracy, school zone; Bail: \$5,000 cash,
\$30,000 surety; (co-defs.: Julio Cesar Rodriguez Morales, Joel Rodriguez); (arr. 03-19).

Michael Carabello; 05-05-04 PTH; #0417CR1329, 0417CR1333; Poss. Class
D, armed asslt in dwelling, kidnapping (2 cts.), mal. destr. prop.,
armed asslt in dwelling, threat to commit crime; Bail: \$100,000 cash,
\$500,000 surety; (arr. 04-02).

Jorge L. Garcia; 06-11-04 PTH; #0417CR1127; Stat. rape of child

cases needing superior court certified attys.

(3
cts.); Bail: \$10,000 pers. surety; (arr. 04-07).

Chicopee District Court

Heather Turconi; 05-11-04 bindover; #0420CR0423; A&B, armed assault
in a
dwelling, B&E n/t for a felony; Bail \$100--Held (arr. 03-11).

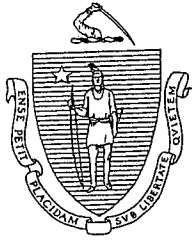
Palmer District Court

Tami Przybycies; 05-25-04 PTH; #0443CR0430; OUI liquor--sixth
offense; Released w/out bail, conditions--alcohol free, random
testing,
no driving; (arr. 04-06).

Nelson Dinzey; 05-26-04 PTH; #0443CR0416; A&B on correctional
officer; Under sentence; (arr. 04-16).

Alexander Perez; 05-12-04 PTH; #0443CR0419; A&B on correctional
officer--2 cts.; Bail: \$500 (girlfriend indicated she would
post);
(arr. 04-16).

Exhibit B



The Commonwealth of Massachusetts
Committee for Public Counsel Services
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PRIVATE COUNSEL DIVISION

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

May 3, 2004

WRITER'S DIRECT DIAL NUMBER

Honorable Robert E. Travaglini
President
Massachusetts Senate
State House, Room 330
Boston, MA 02133

Honorable Therese Murray
Chairman
Senate Committee on Ways and Means
State House, Room 212
Boston, MA 02133

Honorable Thomas M. Finneran
Speaker
House of Representatives
State House, Room 356
Boston, MA 02133

Honorable John H. Rogers
Chairman
House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

Dear President Travaglini and Chairman Murray,
Speaker Finneran and Chairman Rogers:

I write to you with a specific proposal, on a budget matter of great importance to the continued delivery of legal services to the citizens of the Commonwealth on two hundred and fifty thousand civil and criminal cases across the state. My proposal is that the Senate fund the House-created Indigent Counsel Salary Enhancement Trust Fund to its full twelve million dollar capacity, and that House and Senate leadership agree to hold fast to that decision in conference, and in the event of a gubernatorial veto. For the following reasons the funding of the indigent legal services delivery system must be addressed in this budget cycle.

Honorable Robert E. Travaglini
Honorable Therese Murray
Honorable Thomas M. Finneran
Honorable John H. Rogers

Page 2

May 3, 2004

1. The right to counsel for the poor in Massachusetts is now in crisis; a crisis which threatens not only long-established Constitutional rights, but the effective operation of our judicial branch, and the preservation of public safety. In Western Massachusetts right now, judges are issuing orders to the Committee for Public Counsel Services (CPCS) to assign counsel, under threat of contempt, in cases where criminal defendants are languishing in jail without a lawyer, or children facing a vital 72-hour hearing in Care and Protection cases are without legal assistance. In addition, we are now aware of three judges who, invoking the "exceptional circumstances" provision of Supreme Judicial Court Rule 3:10(5), have ordered CPCS to pay attorneys at the agency-authorized rate of \$90 per hour. We have reason to believe that the frequency of these orders will increase in the coming days and weeks.
2. Furthermore, we are reliably informed that a national law firm with a Boston office is within weeks of filing pro bono litigation which will argue that the existing counsel compensation rates violate the right to counsel under both the federal and state constitutions. A similar lawsuit in New York, brought by a similar firm and challenging similar rates, resulted in a resounding judgment for the plaintiffs that the Constitution required \$90 per hour; and was followed by enactment of a budget provision which increased hourly rates throughout the state to the level of \$65 and \$75 per hour.
3. Fortunately, the House budget includes an important and decisive step toward adequate funding. By creating a new G.L. chapter 10, section 35Z, the Indigent Counsel Salary Enhancement Trust Fund, the House provides a mechanism, through its \$12 million potential, by which hourly rates for assigned counsel in FY05 could be raised by about five dollars per hour in all assigned counsel cases. The problem is that the revenue-generating mechanism as currently constituted is not sufficient to fill the fund. Our best preliminary estimate is that it may generate only 10%, or even less, of the authorized amount. This amount could increase somewhat if the filing fee were increased from \$15 to \$25, and if the "for a misdemeanor" limitation were removed; but a much more reliable funding source is needed, if the Fund is to provide the intended relief.

I propose dedicating the entire annual counsel fee collections, with the exception of the \$250,000 allocated to CPCS in budget line 0321-1518, to the Salary Enhancement Trust Fund (SETF). Through the first eight months of the current fiscal year, those collections totaled

Honorable Robert E. Travaglini
Honorable Therese Murray
Honorable Thomas M. Finneran
Honorable John H. Rogers

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May 3, 2004

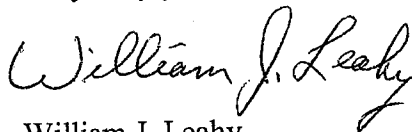
\$4,470,127, as reported to CPCS by Chief Justice Mulligan's office. This amount projects to a total of \$6.7 million over the full fiscal year, which would be an increase of \$1.4 million over last year. Given this trend, and the combined efforts of CPCS, the Chief Justice for Administration and Management and the Office of the Commissioner of Probation, it is reasonable to estimate that counsel fees could be relied upon in FY05 for \$7 million of the \$12 million need.

I further propose that the \$5 million balance of the SETF be directly funded in some fashion, to be determined by the Ways and Means Committees, to ensure that it is fully funded in its first year, until the actual income which will be generated by the new fee for private applications for criminal complaints can be determined.

I conclude by emphasizing that the counsel system for the poor in Massachusetts is well worth preserving. In my November, 2003 appearance before the American Bar Association's special committee to study the status of the Gideon right, I had a chance to compare our system firsthand against those which function in other states. There is no question that our program stands out for its quality and its consistency in enforcing this most fundamental of legal protections, and that its cost is comparable to national norms.

I emphasize also the opportunity I perceive in the midst of crisis. The support among legislators of both parties for better enforcement of the right to counsel has increased. We have had the benefit of many fruitful exchanges with the professional staffs of the Ways and Means Committees in both branches; and we see in the proposals being generated from those exchanges, new and practical ways to ensure that legal services intended for the poor are in fact delivered to the poor, and not to those who can afford to pay. I seek your support at this defining moment in the history of the right to counsel in Massachusetts.

Very truly yours,

A handwritten signature in cursive script that reads "William J. Leahy". The signature is written in dark ink and is positioned above the printed name and title.

William J. Leahy
Chief Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE
NO.

NATHANIEL LAVALLEE, CORDELLE SIMMONDS, ISSAC VERDEJO, JAMAR T.
GILLERSON, ARNOLD FREEMAN A.K.A. JEFFREY THOMPSON, HAROLD
VARGAS, REGINALD C. SMITH, COREY L. SMITH, DEBRA STAPLES,
CHARLES FOLEY, DOUGLAS LEWIS, KEITH E. TAKEY, DANA J. JONES, DANA
JONES, ANGEL RIVERA, JOSEPH POLAMTIER, MARIA ALVARADO,
JONATHAN MARRERO, OMAR HALL, LUIS A. OSORIO, OTHER UNKNOWN
INDIGENT CRIMINAL DEFENDANTS,
AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

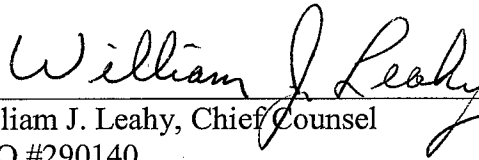
FURTHER AFFIDAVIT OF WILLIAM J. LEAHY

I, William J. Leahy, Chief Counsel of the Committee for Public Counsel Services, hereby
state further that:

1. The nineteen Notices of Assignment of Counsel which I received from the Springfield District Court on the afternoon of May 4, 2004, which are described in the Affidavit of Andrew Silverman at pp.3-5, par. 8 and 11, are the most which I have received from a court at any one time during the assigned counsel crisis; but they are not the first such orders I have received.
2. Since July, 2003, I or other members of my central Boston office staff have received judicial requests or orders to appear individually to provide representation to indigent parties from at least the following courts: Bristol Juvenile, Berkshire Juvenile, Hampden Juvenile, Wareham District, Hampden Superior, and Suffolk Superior. On each such occasion save one, we were successful in persuading one or more appropriate, certified, local counsel to accept the assignment(s). In August, 2003, Deputy Chief Counsel Patricia A. Wynn, Deputy Chief Counsel Andrew Silverman and CPCS Chairman Willie J. Davis appeared in Suffolk Superior Court to provide emergency representation to individual criminal defendants.

3. Recently, we have received orders issued pursuant to Supreme Judicial Court Rule 3:10, Section 5, from Justices of the Holyoke District Court, the Northampton District Court, the Franklin County Juvenile Court, and the Hampden County Superior Court. Each of these orders has directed CPCS to pay an individual private attorney at the CPCS authorized hourly rates, notwithstanding the limitation imposed by the relevant budgetary line item, 0321-1510.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 6th DAY
OF MAY, 2004.



William J. Leahy, Chief Counsel

BBO #290140

COMMITTEE FOR PUBLIC COUNSEL SERVICES

44 Bromfield Street, Suite 200

Boston, MA 02108

(617) 482-6212

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE
NO.

NATHANIEL LAVALLEE, CORDELLE SIMMONDS, ISSAC VERDEJO, JAMAR T. GILLERSON, ARNOLD FREEMAN A.K.A. JEFFREY THOMPSON, HAROLD VARGAS, REGINALD C. SMITH, COREY L. SMITH, DEBRA STAPLES, CHARLES FOLEY, DOUGLAS LEWIS, KEITH E. TAKEY, DANA J. JONES, DANA JONES, ANGEL RIVERA, JOSEPH POLAMTIER, MARIA ALVARADO, JONATHAN MARRERO, OMAR HALL, LUIS A. OSORIO, OTHER UNKNOWN INDIGENT CRIMINAL DEFENDANTS,
AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF PATRICIA A. WYNN

I, Patricia A. Wynn, do hereby state upon information and belief that:

1. I am the Deputy Chief Counsel for the Private Counsel Division of the Committee for Public Counsel Services (CPCS). I have served in this position since September of 1995.
2. In my capacity as Deputy Chief Counsel for the Private Counsel Division, I am responsible for the provision of legal services by private attorneys to indigent persons on cases in which there is a right to court appointed counsel under the state and federal constitutions, Massachusetts statute, or Massachusetts case law.
3. To carry out these responsibilities on civil and criminal right to counsel cases in Massachusetts, CPCS utilized the services of approximately 2500 private attorneys in fiscal year 2003.

4. The number of private attorneys available to take assignments on right to counsel cases declined by over 200 attorneys in the five years between fiscal year 1999 and fiscal year 2003, the last full year for which such data is available.

5. In the current fiscal year, FY2004, there has been a further decline in the number of private attorneys available to take cases.

6. To provide services on right to counsel cases in the District Courts of Massachusetts, CPCS has utilized the services of approximately 2000 private attorneys.

7. The number of private attorneys available to take District Court right to counsel cases has declined.

8. The number of available private attorneys has declined as a result of attorneys ceasing to accept assignments on right to counsel cases or deciding to reduce the number and proportion of right to counsel cases in their private practices.

9. Attorneys who cease taking such assignments or limit the number of such assignments state that such action is necessary because the rates of compensation are too low, the rates do not meet the cost of overhead, and there has not been any significant change in the rates for twenty years.

10. In 1984, the hourly rates of compensation for private attorneys on right to counsel cases was as follows (the dollar amounts are expressed as an out-of-court rate followed by an in-court rate): District Court - \$25/\$35; Superior Court - \$25/\$35; Murder - \$50/\$50; Care and Protection - \$35/\$35; Delinquency - \$25/\$35; CHINS - \$25/\$35; and Mental Health - \$35/\$35.

11. In 1994, the CPCS committee approved the following hourly rates of compensation for private attorneys on right to counsel cases: District Court Criminal,

Delinquency and CHINS - \$50/\$50; Superior Court Criminal - \$65/\$65; all other Civil cases - \$65/\$65; and Murder cases - \$85/\$85.

12. In 1996, in the General Appropriation Act for FY1997, CPCS received funding to pay the following revised hourly rates of compensation to private attorneys: District Court - \$30/\$30; Superior Court - \$30/\$30; Murder - \$54/\$54; Care and Protection - \$39/\$39; Delinquency - \$30/\$30; CHINS - \$30/\$30; and Mental Health - \$39/\$39.

13. The 1996 adjustments to the rates of compensation established single hourly rates for both in-court and out-of-court services, but decreased the in-court rate of compensation on District Court and Superior Court cases from \$35/hour to \$30/hour.

14. In 1997, in the General Appropriation Act for FY1998, the rates of compensation paid to private attorneys for Superior Court cases was increased to \$39 for in-court services and out-of-court services.

15. With the exception of the adjustment to the Superior Court rates in 1997, the rates of compensation paid to private counsel have not increased since 1996 and have increased just once since 1984.

16. The rate of compensation paid to District Court attorneys today for in-court services is \$30/hour. The rate of compensation paid to District Court attorneys in 1984 for in-court services was \$35/hour. Thus, the hourly rate of compensation paid to District Court attorneys for in-court services on right to counsel cases is less today than it was in 1984.

17. In 2002, the CPCS governing committee approved the following hourly rates of compensation for private attorneys on right to counsel cases: District Court Criminal, Delinquency and CHINS - \$60/\$60; Superior Court Criminal - \$90/\$90; all

other Civil cases - \$90/\$90; and Murder cases - \$120/\$120. The rates approved by the CPCS governing committee in 1994 and 2002 have not received funding in any General Appropriation Act.

18. In each year since 1997, the appropriation for CPCS in the General Appropriation Act has continued the rates that were established in the General Appropriation Acts for FY 1996 and FY1997. Said rates are lower than the rates approved by CPCS in 1994 and substantially lower than the rates approved by CPCS in 2002.

19. During the past three fiscal years CPCS has experienced shortages in the number of attorneys available to take cases in the Superior, District, Juvenile and Probate and Family Courts of the Commonwealth.

20. During such time CPCS has taken steps to address the need for additional attorneys on District Court, Superior Court, Juvenile Delinquency and Care and Protection cases in Hampden County. Such steps have included outreach to the private bar through mailings and the local bar association, expanding the availability of certification training slots, extending the training application deadlines for candidates from western Massachusetts, conducting criminal and civil certification training programs in Springfield in March and April of 2004, and encouraging attorneys from other counties to take cases in Hampden county.

21. For the past several years, all attorneys from western Massachusetts who applied to be certified for District Court cases were accepted in the training program for such cases. In March of 2004, twenty-one attorneys from western Massachusetts completed the certification training program for District Court cases. There are no

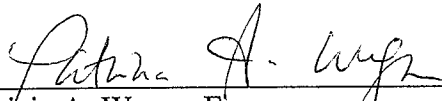
additional attorneys seeking District Court training for the courts in western Massachusetts.

22. The shortages in the number of attorneys available on right to counsel cases has caused defendants on criminal cases to be held on bail for significant periods of time without counsel; to be denied the opportunity for a review of bail determinations; and to have their cases pending in court without counsel. The absence of counsel in these circumstances has harmed the liberty interests of indigent persons and has caused harm to the defense of the cases of indigent persons through the unavailability of timely counsel, investigation, discovery, negotiation and trial on these cases.

23. The shortages in the number of attorneys available on right to counsel cases has caused children and parents to be unrepresented for excessive lengths of time in order for courts to find counsel willing to be assigned in new care and protection cases. This has caused needless delay in temporary custody hearings, and, in many cases, the undue separation of children from their families. The absence of counsel in these circumstances has irreparably harmed the fundamental rights of parents and children to a hearing within seventy-two hours of a child's removal from his or her family.

24. Attorneys who have ceased to take right to counsel cases or have reduced the number of such cases on which they will accept assignments have stated that they wish to be paid the CPCS approved hourly rates of \$60/hour for District Court, Juvenile Delinquency and CHINS cases; \$90/hour for Superior Court criminal and all other civil cases; and \$120/hour for Murder cases.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 5th day
of May, 2004



Patricia A. Wynn, Esq.
Deputy Chief Counsel Private Counsel Division
Committee for Public Counsel Services
44 Bromfield Street
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE
NO.

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(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF NANCY T. BENNETT

I, Nancy T. Bennett, hereby swear upon knowledge, information and belief that:

1. I am the Director of Supervision for the Private Counsel Division of the
Committee for Public Counsel Services (CPCS). I have held this position since
November 1989.
2. My duties include oversight of the assignment of private counsel through CPCS in
all criminal cases at the Trial Court level, and certification of attorney
qualifications to handle District and Superior Court criminal cases.
3. To carry out the assignment to private counsel of criminal cases at the trial level,
CPCS contracts with assignment programs in 12 counties, often called "Bar

Advocate Programs.” My duties include the negotiation and oversight of compliance with these contracts.

4. One provision of the contracts between CPCS and the county assignment programs requires the programs to enter into annual contracts with participating private attorneys, with certain provisions specified by CPCS. These specified provisions have required participating attorneys to maintain malpractice insurance, report bar discipline, cooperate with performance evaluations, and apprise themselves of billing rules. These specified provisions have never included a requirement that an attorney handle a particular number of cases, as such a requirement would discourage participation by many qualified attorneys to the detriment of indigent defendants.
5. In the course of supervising the work of the contracting county assignment programs, I am in constant communication with their directors and staff. I have been aware over the past 3 years of decreasing participation by private attorneys in these programs.
6. In the early 1990's, all 12 county programs maintained substantial waiting lists of attorneys seeking case assignments. When I surveyed the county programs this year I found 10 out of 12 programs had no attorneys waiting to participate, and the total number of attorneys waiting to participate statewide was less than 35.
7. Decreased participation in county assignment programs has been particularly pronounced among private attorneys certified for Superior Court jurisdiction cases. Although the numbers of attorneys who are certified remains substantial, the number of cases which attorneys have been willing to accept at the rates paid

by CPCS in Superior Court cases has decreased. As a result the programs increasingly spend long periods contacting many attorneys before assigning an individual case. For example, in Hampden County in March 2004, there were 48 private attorneys certified for Superior Court criminal assignments. However, only 10 of these attorneys were regularly accepting such cases.

8. The Hampden County Bar Advocates, Inc., (HCBA) has been experiencing reduced participation by private attorneys since the summer of 2000. The HCBA has repeatedly called upon local attorneys to participate, and has repeatedly informed local courts and legislators of the problem, as evidenced by the attached correspondence.
9. Since July 2003 the HCBA has had insufficient private counsel participation to assign duty attorneys to cover the courts.
10. As a result of the lack of duty attorneys, some indigent defendants have been held awaiting trial without counsel and unknown to the HCBA and the CPCS. In February 2004 I learned of 3 such previously unknown, uncounselled detainees who had been held since November 2003. As a result of this discovery, I wrote to all jails serving Hampden County asking for notice of any uncounselled detainees (see attached copies of letters).
11. By February 2004, CPCS' inability to attract sufficient numbers of private counsel to take cases in Hampden County had resulted in 25 people being held at one time without counsel on Superior Court jurisdiction charges, despite daily contact to many attorneys by HCBA.

12. After meeting on February 26, 2004 with the HCBA President and Administrator, together with the CPCS Chief Counsel and Deputy Chief Counsel, I implemented measures to procure private counsel.
13. The HCBA was required to contact daily by email and/or phone each qualified attorney in Hampden County, and to email daily the assignment programs in Hampshire, Worcester and Berkshire counties, to ask attorneys to accept case assignments. (See attached representative samples of emails sent).
14. I telephoned each qualified attorney in Hampden County asking him or her to accept case assignments. A small number of attorneys told me that they would do as I asked to respond to this emergency. Almost all attorneys I spoke with told me that to respond to my request would cause them a significant financial loss, as the hourly rate paid would not cover the cost of the many hours of work required in a Superior Court case.
15. In March, 2004, CPCS conducted a special new lawyer training program in Springfield in an effort to increase attorney participation in Hampden County.
16. Despite these efforts, I know through my daily contact with the HCBA that since February 2004 there have been every day varying numbers of uncounselled indigent detainees. As of this date, the uncounselled indigent detainee held the longest is Mr. Rodriguez held since March 19, 2004 by the Holyoke District Court.
17. On May 3, 2004 no private counsel was willing to accept case assignments in the Springfield District Court, resulting in 20 or more additional uncounselled indigent detainees.

Signed under penalty of perjury

5/5/04
Date

Nancy T. Bennett
Nancy T. Bennett

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

President: Robert A. Gordon

Staff Attorney: Robert J. Moran

To: Bar Advocate Attorneys
From: Chris Cosby
Date: June 21, 2000
Subject: Duty Day Scheduling / Cancellations

We have been experiencing a growing problem in the past few months with attorneys cancelling scheduled bar advocate duty days, sometimes on very short notice, particularly in the Springfield District Court. This, coupled with a higher than usual number of attorneys temporarily off the list for health and other reasons, has caused considerable difficulty for us in trying to fill the vacancies and make sure the courts have adequate coverage.

Please note that duty days should only be cancelled on an **emergency basis**. If you must cancel, please do so with as much advance notice as possible. You are also reminded that your assignment is for the entire day; you should not plan or expect to be there only for the morning session.

We would like to thank those attorneys who have filled in and taken extra days to help us out. We also still have days open in many of the courts throughout the summer months due to advocates' vacations, so if you are available to take any extra days, please call our office. If there are particular days on which you would be available and would like to be called in the event we receive a cancellation, please let us know.

Thank you for your cooperation.

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

August 27, 2001

The Honorable Kenneth J. Cote, Jr.
First Justice, District Court Department
Palmer Division
235 Sykes Street
Palmer, MA 01069

Dear Judge Cote:

We take this opportunity to inform you that the Hampden County Bar Advocates, Inc. is suffering a shortage of bar advocate attorneys in the superior and district courts.

The reasons for the shortage are diverse, some being:

- Bar advocates taking jobs with the D.A.'s Office,
- The pay scale, and
- The potential liability in handling such cases for such a low pay.

Also, because of this shortage, bar advocates in Springfield and Holyoke District Courts, as well as the Hampden Superior Court, are carrying too large of a caseload in many instances.

We have ten potential new advocates for district court that we are processing but who will not be available until after the fall CPCS training. We are also working to attract attorneys to the superior court, but, frankly, it appears to be a difficult task.

It would be appreciated if you would bear with us so we may all work to provide sufficient coverage to all courts.

Please contact me if you have any questions. Thank you.

Very truly yours,

Anthony C. Bonavita
President

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

March 25, 2002

The Honorable Lawrence B. Wernick
Regional Administrative Judge
Hampden County Superior Court
50 State Street, P.O. Box 559
Springfield, MA 01102-0559

Dear Justice Wernick:

As president of the Hampden County Bar Advocates, Inc., I received a letter from Andy Klyman, Springfield Chief of Committee for Public Counsel Services, indicating that CPCS, because of a shortage of staff, would no longer be accepting appointments for some period of time beginning April 1, 2002.

Traditionally, the bar advocate program in the past would pick up the slack in that type of situation. However, I regret to inform you that I cannot guarantee that the bar advocate program will be able to take on the extra burden of additional cases that would normally have gone to CPCS. Many of our bar advocates, due to the volume of cases in superior court, are already overburdened with too many cases. We have done our best to attract some new attorneys to superior court which has at least allowed us to maintain the same level of coverage as we have had in the past, but I do not foresee the ability of the present bar advocates in superior court to shoulder this additional load. I am concerned that the quality of their work could be endangered by the weight of the volume of work.

I felt it imperative to notify you of this as soon as possible rather than to wait to see how this issue developed. Of course I remain available to discuss this matter with you further on behalf of the bar advocates and would be willing to meet with you and Mr. Klyman if you believe it would be necessary and helpful.

Very truly yours,

Anthony C. Bonavita
President

cc: Andrew Klyman, Esquire
Nancy T. Bennett, Esquire, CPCS
ACB/cfl

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

FAX TRANSMITTAL FORM

To: Jeffrey S. Weisser, Esquire

**From: Anthony C. Bonavita, President
Hampden County Bar Advocates, Inc.**

Date: March 29, 2002

Subject: Superior Court Bar Advocate Meeting

Number of pages, including transmittal form: one

There will be a meeting of Superior Court Bar Advocates at 4:30 p.m. on Wednesday, April 3, 2002 at Anthony Bonavita's office, 101 State Street, #321, Springfield, MA.

The purpose of this meeting is to discuss appointments in Superior Court and other issues of interest.

Please make every effort to attend. Thank you.

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

April 4, 2002

The Honorable Lawrence B. Wernick
Regional Administrative Judge
Hampden County Superior Court
50 State Street, P.O. Box 559
Springfield, MA 01102-0559

Dear Justice Wernick:

I have recently conducted a meeting of the superior court bar advocates where many issues were discussed. While I am going to go attempt to try to explain these issues in detail, I would at the outset request that we reactivate a criminal superior court bench / bar committee made up of representatives of the Hampden County Bar Advocates, the Committee for Public Counsel Services (CPCS), the District Attorney's Office, clerk's office, probation department, and judges. I believe that monthly meetings would help us address the following and other issues.

The following is a list of issues that came up for discussion at our meeting:

1. Attracting new applicants to the superior court bar advocate list.
2. Creating a bench / bar committee as stated above.
3. Considering calling probation matters at a set time in superior court, such as 11:00 or 11:30 a.m.
4. Tightening up the appointment of counsel for indigent defendants. We believe that there are issues concerning the procedure for determining one's indigency for the appointment of counsel that should be addressed. It *appears* that probation takes information from the defendant in the cellblock, and, based solely on that information, makes a determination without further checking of information provided. If we are mistaken, we would appreciate an explanation of how the information is checked.
5. We believe that part of the problem concerning the overburdening of bar advocates with the volume of cases is the time they have to spend in court on matters such as pre-trial conferences. We would like to see if there is a way to streamline that process so that attorneys can spend more time in their offices working on cases rather than waiting in court for pre-trial conference dates to be approved.

6. We would like to clarify my previous letter concerning CPCS's notice that they will not be taking cases as of April 1, 2002. As I stated in my previous letter, I could not guarantee that the bar advocates could shoulder the burden of the additional volume of cases. While I sympathize with Mr. Klyman's situation, I have concerns about the volume of cases that could be put upon each bar advocate. After discussion, we would request that this would be handled at the discretion of each bar advocate. Some bar advocates may be able to take additional cases; other bar advocates may have to decline until their caseload lowers.

Some solutions might be that if a particular bar advocate cannot accept an appointment, after arraignment, that the matter be scheduled for a pre-trial conference and clarification of counsel so that an appropriate bar advocate can be assigned who could handle the additional caseload. In light of this situation, we would also request that the time frame for setting trial dates also be extended beyond the normal 90-120 days. This would allow bar advocates to take additional cases without having them stacking too many trials per week. It would give bar advocate more time to work on cases as the cases would be spaced further apart.

7. We would like to put together a procedure whereby the bar advocate office could be notified in advance of arraignment dates so that the bar advocate office could then notify the individual attorneys to appear on that date. Oftentimes we do not know when our clients, who we have represented in the district court, are being arraigned.
8. We would like to discuss alternatives to the imposition of minimum mandatory sentences.

In conclusion, I believe that a bench / bar committee, with open and frank discussions could lead to the resolution of many of these issues and a more efficient utilization of the court process. Certainly, we would like to give it our best effort.

Please feel free to contact me if you do wish to schedule a bench / bar committee meeting or to discuss this further. Thank you for your consideration.

Very truly yours,

Anthony C. Bonavita
President

cc: Andy Klyman, Chief, CPCS Springfield Office
Marie G. Mazza, Clerk of Courts, Superior Court Department
Michael S. Ghazil, Chief Probation Officer, Superior Court Department
William M. Bennett, District Attorney

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

May 1, 2002

The Honorable Linda J. Melconian
Senate Majority Leader
664 Union Street
West Springfield, MA 02133

Re: Fiscal 2003 Budget Cuts
Private Assigned Counsel Compensation Accounts

Dear Senator Melconian:

As officers of the Hampden County Bar Advocates, Inc., we have become aware of the proposed cuts to the private assigned counsel compensation accounts. Under these cuts, the superior court bar advocates hourly rate would be reduced from \$39.00 to \$34.00 per hour and the district court bar advocates rate would be reduced from \$30.00 per hour to \$25.00 per hour.

This amounts to an average of a 15% rate decrease to bar advocate attorneys. The dedicated attorneys currently doing this work are already severely underpaid, even before the proposed decreases in the compensation levels, and many will be unable to afford to continue accepting cases.

These proposed cuts would devastate an already overburdened system. The volume of cases in the district and superior courts in Hampden County is huge, and the number of attorneys necessary to maintain the system is already now difficult to achieve. If this decrease is implemented, we are certain it will be nearly impossible to attract attorneys to continue working for those rates, and we will lose many of the attorneys who are now working within the system.

In essence, the criminal justice system is at the breaking point, and the next month could well decide its fate. The end result could be to infringe upon the constitutional rights of citizens to be defended by competent attorneys who serve as bar advocates.

We urge you, on behalf of the Hampden County Bar Advocates, to restore the funding to the current \$39.00 per hour superior court rate and \$30.00 per hour district court rate. Thank you.

Very truly yours,

Anthony C. Bonavita, President

Timothy M. Farris, Vice President

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

October 15, 2002

The Honorable William B. McDonough
Presiding Justice
District Court Dept., Holyoke Division
20 Court Plaza
Holyoke, MA 01040

Dear Judge McDonough:

The Hampden County Bar Advocates, Inc. cordially invites you to participate in a public hearing (see enclosed notice) scheduled for Wednesday, October 23, 2002 from 4:00 – 5:30 p.m. at the Hampden County Hall of Justice, Courtroom #2, 1st floor, 50 State St., Springfield, Massachusetts 01103. The topic of this hearing is the compensation rates for attorneys representing indigent persons in the Trial Courts of the Commonwealth.

These attorneys provide valuable and dedicated legal services, but the compensation levels have not increased in many years. We have lost many talented attorneys due to the low compensation rates and are having difficulty providing adequate coverage for the courts.

We invite you to appear to offer testimony and to obtain supportive information.

Please call our office if you have any questions. Thank you.

Very truly yours,

Christine Cosby
Administrator

Enclosure

ACB/cfl

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

November 15, 2002

William J. Leahy, Esquire
Chief Counsel
Committee for Public Counsel Services
44 Bromfield Street
Boston, MA 02108

Dear Attorney Leahy:

As president of the Hampden County Bar Advocates, Inc., I felt it was imperative to inform you of the continuing staffing problems we are experiencing in the courts of Hampden County. As I told the CPCS panel at the compensation hearing that was held in Springfield on October 23, 2002, the crisis is *now*, not next year.

Due to what I perceive to be the discouragement of attorneys after the recent proposed rate cuts, many attorneys have decided not to continue this work, or to decrease their level of work. Others, like I, are receiving so many appointments that we must carefully police how many appointments we accept. We cannot expect bar advocates to take so many cases that they cannot handle the workload or provide quality representation to their clients. Some district court bar advocates have already received notices from CPCS that their assignments have exceeded the caseload limits for the first six months of this fiscal year.

This week (Tuesday) we had no bar advocates in Springfield District Court as the two that were scheduled called in sick. The norm in Springfield District Court is two or three bar advocates each day, not last year's four.

Superior Court has many days with no bar advocates scheduled as "duty day attorneys." Other bar advocate attorneys are sought out and asked to fill in as volunteers on a case by case basis.

My point is to apprise you of the dire situation we are in and to emphasize that there is not an organized or unorganized effort to collapse the system; it is collapsing itself. We are down to a skeleton crew and, when people get sick or have to reschedule because they are on trial, it is difficult to find replacements. The bottom line is we do not have enough bar advocates, and the reason is that the pay is too low.

In closing, I must add that while we have been working with Nancy Bennett on the administration of juvenile court bar advocates, we have been told that the same problems exist there. Thus, there

William J. Leahy, Esquire
Chief Counsel, CPCS

November 15, 2002
Page 2

are too few bar advocates for the enormous volume of cases. Until and unless the compensation issues are addressed, I do not see the problems I've described disappearing.

Rest assured, we bar advocates who are still continuing to do this work will do our best, but the magnitude of the situation is growing.

Very truly yours,

Anthony C. Bonavita, President

cc: Patricia A. Wynn, Deputy Chief Counsel, CPCS
Nancy T. Bennett, Dir. of Supervision and Eval., CPCS
The Honorable William W. Teahan, Jr., Justice With Administrative Authority
The Honorable Lawrence B. Wernick, Regional Administrative Justice

ACB/cfl

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Telephone: (413) 732-7110
FAX: (413) 732-6545

To: Bar Advocate Attorneys Working in District Court
From: Anthony C. Bonavita, Esquire--President
Date: May 7, 2003
Subject: Bail Reviews

District court bar advocates are reminded that *when you are assigned to represent a client, part of your assignment is to provide representation to that client at a bail review in superior court.*

The number of attorneys working in the superior court is critically low at the moment, and there are many days when we are unable to schedule an attorney to cover the superior court. District court attorneys should *not* send clients in for bail review unless you are scheduling it for a time when you can come in to cover the bail review or unless arrangements have been made with another attorney to cover the bail review for you.

Thank you for your anticipated cooperation.

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

To: Superior Court Certified Bar Advocate Attorneys
From: Anthony C. Bonavita, President
Date: May 20, 2003
Subject: Caseloads; Superior Court Meeting

The bar advocate office has received a copy of a letter sent by Andrew Klyman, Attorney-in-Charge of the local CPCS office, to the Honorable C. Brian McDonald, Regional Administrative Judge of the Hampden Superior Court. The letter reads, in part, "the Springfield CPCS office will be unavailable to accept any further appointments in the Hampden County Superior Court effective June 2nd, 2003. The only exceptions to this will be for those cases where CPCS was appointed in the District Court and for violations of probation where CPCS was counsel of record in the case where the probation was imposed."

My purpose in contacting you is two-fold. We need to ascertain the caseloads of the bar advocate attorneys and their ability to accept further appointments. Also, I would like to schedule a **meeting** of the superior court bar advocate attorneys at **4:00 p.m. on Wednesday, May 28th** in the bar advocate office.

Please call (732-7110), fax (732-6545), or e-mail (hampden@aasp.net) the information on your current caseload and your ability to take further case assignments to Chris at the bar advocate office by Tuesday, May 27th so we will have it in time for our meeting.

Thank you for your anticipated cooperation.

Your name: _____

How many *appointed* Superior Court cases do you currently have? _____

Are you able to accept any additional cases at this time? ____ If yes, how many? ____

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

July 26, 2003

The Honorable Robert F. Kumor, Jr.
First Justice
Springfield District Court
50 State St., P.O. Box 2421
Springfield, MA 01101-2421

Dear Judge Kumor:

This is to advise you of the extreme difficulty we are experiencing in scheduling attorneys to accept duty day assignments as bar advocates in all of the courts--district, superior, and juvenile. As I'm sure you are aware, the Springfield District Court has been operating with an average of two, sometimes three, bar advocate attorneys each day. Not too long ago, that number was four. This causes the number of appointments each attorney receives to be considerably higher than it used to be each time they are on duty, which, in turn, causes them to have to cancel days because they have too many cases. The other district and juvenile courts are facing similar problems, and court staff is often forced to seek-out attorneys who are not scheduled to be accepting cases and ask them to fill in. We haven't been able to schedule a duty day advocate in superior court in several months and depend on attorneys to voluntarily accept cases. Some attorneys have reported receiving assignments for cases when they haven't been on duty and for which they have not agreed to accept appointment; this causes additional problems as most attorneys are unable to accept the assignments and must return them to the court for reassignment.

We have lost more than fifty attorneys over the past few years, for a number of reasons. In addition to the usual job changes and retirements, we had several attorneys become discouraged and withdraw altogether, or decrease their level of appointed work, because of the proposed rate cuts last fiscal year. We are now faced with the fact that the legislature has adjourned without dealing with either passing the supplemental funding request to cover expenses for fiscal year 2003 or the proposed override of the 18% cut in funding for attorney compensation for fiscal year 2004. We don't have any guarantee if or when these funding issues will be dealt with, leaving many attorneys not knowing when they will be paid for their work. These are all people who must maintain their own offices and who have personal and family obligations as well. This does not even address the issue of the woefully inadequate rate of compensation they are supposed to receive which has not been increased in far too long. Many feel they can no longer afford to do this work. Add to all this the inconveniences caused by the loss of video conferencing and cuts in visiting hours at the jail, and the inability to find investigators, interpreters, process servers, and experts willing to work on cases when they are also not being paid, it just makes it far too difficult to continue taking cases. Attorneys are not obligated to do this work; they choose to do it, and right now, many are choosing not to do it.

Enclosed is a copy of the August bar advocate calendar for Springfield District Court. As you can see, we have not been able to schedule enough bar advocates to provide adequate coverage and felt we should advise you of this problem. We will continue to try to fill the vacancies, but it does not look promising at this time.

Respectfully,

Anthony C. Bonavita, President

Enclosure
cf

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

July 26, 2003

The Honorable Philip A. Contant
First Justice
Westfield District Court
224 Elm Street
Westfield, MA 01085

Dear Judge Contant:

Enclosed herewith please find a copy of a letter being sent today to Judge Robert F. Kumor, Jr.,
First Justice of the Springfield District Court.

The situations discussed in that letter, the shortage of attorneys currently doing bar advocate work and the reasons for that shortage, as I see them, are a problem in all of the courts in Hampden County and across the state. In the interest of brevity, I have not individualized the information for each of the courts in our county, but I am sure you are aware of how this is affecting business in the court or courts in which you sit.

Enclosed please find a copy of the August calendar for your court. As is the case in all Hampden County courts, we have not been able to schedule enough bar advocates to provide adequate coverage and felt we should advise you of this problem. We will continue to try to fill the vacancies, but it does not look promising at this time.

Respectfully,

Anthony C. Bonavita
President

Enclosures

cfl

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

October 10, 2003

William J. Leahy, Chief Counsel
Committee for Public Counsel Services
44 Bromfield Street
Boston, MA 02108

Re: Bar Advocate Training

Dear Attorney Leahy:

This letter is to request your help and consideration in adding new bar advocates to our panel. We submitted the names of fifteen attorneys to be considered for the November training (two of them have been working on a provisional waiver), and we gratefully acknowledge the Training Unit's placement of all of them in that training. These new attorneys will help with the shortages we are experiencing in the district and juvenile courts. Since our submission, we have received applications from another five attorneys.

Our Board of Directors is proposing a few suggestions to help deal with our dilemma of too few attorneys:

1. Expand the number of slots at the November training so more attorneys can be certified and begin working;
2. Grant provisional waivers to attorneys who are not accepted into the November training so they can begin working now and become certified at the next scheduled training;
3. Schedule an additional training as soon as possible to accommodate those not accepted into the November training;
4. Have a training here, perhaps using some of our program attorneys and those from the surrounding counties (I believe a program like this was held at Western New England College in June of 1995 for the western counties.)

William J. Leahy, Chief Counsel
Committee for Public Counsel Services

October 10, 2003
Page 2

We would appreciate hearing from you as soon as possible regarding our request and suggestions. Thank you for your consideration and any help you can give us.

Very truly yours,

Anthony C. Bonavita
President

cc: The Honorable Judd J. Carhart
The Honorable C. Brian McDonald
The Honorable Robert F. Kumor, Jr.
The Honorable William W. Teahan, Jr.
The Honorable Mary E. Hurley-Marks
The Honorable William B. McDonough
The Honorable Patricia Martinelli Poehler
The Honorable Philip A. Contant
The Honorable Daniel J. Swords
Patricia A. Wynn, Deputy Chief Counsel, Private Counsel Division, CPCS
Cathleen L. Bennett, Director, CPCS Training Unit
Nancy T. Bennett, Director of Supervision and Evaluation, CPCS

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

To: Bar Advocate Attorneys

Date: October 10, 2003

Subject: Assignments

Numerous duty day slots remain unfilled in all courts. We also have cases which need to be assigned to superior court certified attorneys.

We strongly encourage bar advocate attorneys to take assignments. Please contact us if you are interested in accepting duty days and/or cases.

Please call our office if you have any questions or would like to sign up.

Thank you.

cc: The Honorable Judd J. Carhart
 The Honorable C. Brian McDonald
 The Honorable Robert F. Kumor, Jr.
 The Honorable William W. Teahan, Jr.
 The Honorable Mary E. Hurley-Marks
 The Honorable William B. McDonough
 The Honorable Patricia Martinelli Poehler
 The Honorable Philip A. Contant
 The Honorable Daniel J. Swords

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

FAX TRANSMITTAL FORM

To: Nancy T. Bennett, Esquire
From: Christine Cosby
Date: November 7, 2003
Subject: Shortage of Bar Advocate Attorneys
Number of pages, including transmittal form: nineteen

Dear Attorney Bennett:

In response to your letter of today, the following is correspondence detailing the disclosure of the shortage of attorneys we have been experiencing in Hampden County.

Thank you.

HAMPDEN COUNTY BAR ADVOCATES, INC.

55 State Street, Suite 208
Springfield, MA 01103-2014
Telephone: (413) 732-7110
FAX: (413) 732-6545

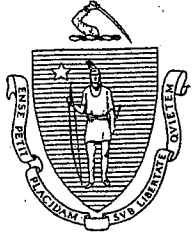
To: Hampden County Bar Advocate Attorneys
From: Anthony C. Bonavita, President
Date: November 14, 2003
Subject: Duty Day Assignments

The Hampden County Bar Advocate program needs your help in ensuring that the rights of indigent criminal defendants are protected.

We are having difficulty in scheduling attorneys to cover duty days in all the courts, most particularly in Holyoke and Springfield District Courts, Holyoke and Springfield Juvenile Courts, and the Hampden County Superior Court. Our concern is that defendants are in danger of being held without the benefit of counsel because duty days are going unmanned.

We ask that all attorneys consider signing up for days so we can have at least one attorney available each day to make sure that no one is held without an attorney. We will be contacting you to ascertain if you are able to take any assignments. You may also call our office (413-732-7110) at your convenience to schedule duty days.

Thank you for your consideration and help at this difficult time.



WILLIAM J. LEAHY
CHIEF COUNSEL

The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108

TEL: (617) 482-6212
FAX: (617) 988-8495

PATRICIA A. WYNN
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

February 11, 2004

WRITER'S DIRECT DIAL NUMBER

Sheriff Ashe
627 Randall Road
Ludlow, MA 01056

Dear Sheriff Ashe,

I am an attorney at the Committee for Public Counsel Services responsible for oversight of the assignment of private counsel for indigent criminal defendants through the Hampden County Bar Advocates, Inc.

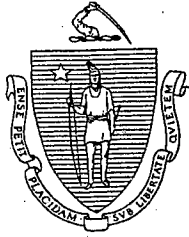
I have received a report from a private attorney who regularly appears in the Hampden County courts that there are pretrial detainees in Hampden County, who are without counsel and of whose plight the Hampden County Bar Advocates, Inc. is unaware.

In order that my Office and our contractor, the Hampden County Bar Advocates, can fulfill our statutory obligation to provide counsel for the indigent, would you please notify me of the name and next court appearance of any indigent person in your custody who is presently without counsel and awaiting trial? Thank you very much for your assistance. This message is being sent to you by fax and email.

Sincerely,

A handwritten signature in cursive script that reads "Nancy T. Bennett".

Nancy T. Bennett, Esq.
Director of Supervision and Evaluation



The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108

WILLIAM J. LEAHY
CHIEF COUNSEL

TEL: (617) 482-6212
FAX: (617) 988-8495

PATRICIA A. WYNN
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

February 11, 2004

WRITER'S DIRECT DIAL NUMBER

Ms. Barbara Guarino, Superintendent
MCI Framingham
99 Loring Drive
P.O. Box 9007
Framingham, MA 01704


Dear Superintendent Guarino,

I have sent the attached inquiry to the Sheriff of Hampden County to assure that all efforts are being made to provide counsel to indigent pretrial detainees.

Would you kindly notify me at this office if there are any indigent uncounselled pretrial detainees in your custody from the Hampden County courts?

Thank you very much for your assistance.

Very truly yours


Nancy T. Bennett, Esq.
Director of Supervision and Evaluation

Subject: cases needing superior court certified attys.

Date: Mon, 1 Mar 2004 08:43:50 -0500

From: "hampdenba" <hampdenba@publiccounsel.net>

To: <hampdenba@publiccounsel.net>

Another update . . . As you can see, there are LOTS of cases needing assignment. Please call us, (413) 732-7110, or respond to this e-mail if you can take anything. Thanks for your help.

Listed below are cases needing to be assigned to superior court certified attorneys. If you are interested in any of these cases, please call us (732-7110) and we will advise you of the new date.

As always, thank you.

Chris

Hampden Superior Court

Ismael Rodriguez; 03-01-04 PTH & clar. of counsel; #03-1311-1, 2, 3; Dist. class B, school zone, resist arrest; Bail: \$500 cash (posted) (from CPCS), (arr. 01-26)

Daisy Hernandez; 03-01-04 VOP & clar. of counsel; #02-459-1 & 01-789-1 (2 cts. dist. class A); new charge (mal. dam. m/v Spfld. Dist. Ct.) (from CPCS), (arr. 02-03)

Leon Cruz; 02-26-04 PTH; #04-79-1, 2; Armed asslt. w/int. murder, A&B dang. weap.; Bail: \$25,000 cash, \$250,000 surety (from CPCS), (arr. 02-03)

Nelson Aponte; 03-01-04 PTH & clar. of counsel; #04-6-1, 2, Larc. in bldg., B&E in daytime; Bail: \$25,000 (from CPCS), (arr. 01-27)

Thomas Williams; 03-09-04 PTH & status; #02-726-01; A&B on corrections officer; Held on bail (from CPCS), (arr. 02-04)

Joyce Gauthier; 02-25-04 VOP & clar. of counsel; #98-2801 (VOP for missing restitution pymts) (from CPCS), (arr. 02-04)

Roberto Perez; 03-02-04 PTC, clar. of counsel, & VOP; 04-575, 04-462, 03-7475; Rec. st. m/v, asslt to rape, kidnapping, armed rob.; Bail \$100 (not met); (from CPCS), (arr. 02-09)

Corley Seabrooks; 02-24-04 Clar. of counsel; Dist. cocaine (subseq. off.)

Victor Cotto; 02-27-04 PTH, clar. of counsel; #04-16-1, 2, 3; A&B,

A&B dang. weap. (2 cts); Bail: \$2,500 cash; (from CPCS), (arr. 01-22)

Yazmin Vega; 02-26-04 PTH, clar. of counsel; #04-73-1; unarmed rob.; Bail: ROR; (from CPCS), (arr. 02-12)

Springfield District Court

Luis Molina; 03-04-04 PTH; #0423CR379; Dist .A, poss. to dist. A, carry f/a w/out lic., poss. f/a w/out FID, traf. cocaine; Bail \$100,000 cash w/out prej.; Spanish interpreter (arr. 02-05)

Mariano Pabon; 03-04-04 PTH; #0423CR047; Traf. cocaine, poss. D, school zone; Bail \$10,000 cash; Spanish interpreter

Ricardo Murphy; 03-01-04 PTH; #0423CR1123; Traf. cocaine, poss. class D; Held; (co-defs. Andre Miller, Shamika Charles) (arr. 02-11)

Rolando Rodriguez; 03-01-04 PTH; #04-0493; Poss. to dist. class A (subseq. off.), school zone; Bail: \$5,000 cash, \$50,000 bond, (arr. 01-20).

William Sierra; 03-05-04 PTH; #0423CR0982; Dist. class A (sub. off.), poss. to dist. class A, school zone; Bail: \$25,000 cash, \$25,000 bond, (arr. 02-06).

Kevin Marlin; 03-11-04 PTH; #0423CR0885; Traf. cocaine, poss. to dist. class D, conspir.; Bail: \$1,000--posted, (arr. 02-02)

Edgard Melendez; 03-01-04 PTH; #04-0337; Traf. cocaine; Held (co-defs. Iris Andino, Luisa Rivera).

Richard Torres; 03-19-04 PTH; #0423CR1390; Traf. cocaine, oper. m/v w/ susp. lic.; Bail: \$1,000 cash, \$10,000 bond, (arr. 02-19).

James Kelly; 02-27-04 PTH; #0423CR0883, 0123CR12202; Fug. from justice poss. class B, rec. stol. m/v; Bail: \$10,000 (released on 0123CR12202, held on fug. charge), (arr. 02-02).

Michael Harris; 03-02-04 PTH; #0423CR0867; Asslt. dang. weap., poss. class b, resist arrest, unlic oper of m/v, # plate viol. to conceal ID, unreg., neg. oper. of m/v, unins., fail to signal; Bail: \$2,500; (arr. 02-02).

Leeander Owens; 03-25-04 PTH; #04-23CR1603; Poss. dlass d, firearm use in felony, armed robbery, larc. from person; Bail: \$5,000 cash (arr. 02-26).

Wilfredo Rivera; 03-25-04 PTH; #0423CR1593; Carry firearm w/out lic., traf. cocaine, poss. firearm w/out FID, rec. firearm w/ defaced no., firearm use in felony; Bail: \$25,000 cash, \$250,000 bond;

(arr. 02-26).

Holyoke District Court

Stephen Hall; 03-04-04 PTH; #0417CR0496; Fail stop for police, resist arrest, poss. class A, asslt to murder, neg. oper. m/v, A&B dang. weap., A&B on p.o., poss. hypo; Bail: \$50,000 cash / \$500,000 surety (arr. 02-10)

Jesus Lopez; 03-02-04 PTH; #0417CR0010; Armed rob., armed & masked rob--2 cts. each; Bail: \$1,500 (posted), (arr. 02-03).

Carlos A. Cordova; 03-03-04 PTH; #0317CR4638; A&B, armed rob; Bail: \$2,500 cash, \$25,000 surety (arr. 02-04).

Robert Lamontagne; (co-def. Yancarlos Marrero); 03-02-04 PTH; #0317CR5387; Armed rob, armed & masked rob--2 cts. each; Bail: \$10,000 pers. surety, (arr. 12-30).

Yancarlos Marrero; (co-def. Robert Lamontagne); 03-02-04 PTH; #0317CR5386; Armed rob, armed & masked rob--2 cts. each; Bail \$10,000 pers. surety, (arr. 12-30).

Alberto Negron; 03-16-04 PTH; #0417CR0651; A&B dang. weap., mayhem; Bail: \$15,000 cash, \$150,000 surety, (arr. 02-20).

William Aponte; 03-19-04 PTH; #0417CR0673; Trespass, poss. class A, poss. to dist. class A, school zone, consp., B&E bldg. n/t for felony, poss. firearm w/out FID card, poss. sawed-off shotgun (2 cts.); Bail: \$5,000 c/s, (arr. 02-19).

Sandra Cruz; 03-03-04 PTH; #0417CR0517; Dist. class B, traf. cocaine; Bail: \$1,000--posted.

William Almonte; 03-09-0 PTH; #0417CR0720; Poss. class b, poss. to dist. class B, school zone, traf. cocaine; Bail: \$5,000--posted.

Chicopee District Court

Angel L. Rivera, Jr.; bindover a.s.a.p.; rape of child w/ force (2 cts.), obscene matter to minor (2 cts.), indec. A&B on cuild under 14; Held, (arr. 02-17).

Jose Soto; 03-19-04 PTH; Traf. cocaine, poss. class D; Bail: \$1,000 (arr. 02-20).

Courtney Moss; 03-19-04 PTH; Traf. cocaine, poss. class D; Bail: \$5,000 (arr. 02-20)

Subject: FW: cases needing superior court certified attys.

Date: Thu, 1 Apr 2004 09:18:44 -0500

From: "Hampden County Bar Advocates" <hampdenba@publiccounsel.net>

To: <hampdenba@publiccounsel.net>

You will find listed below cases needing to be assigned to superior court certified attorneys. If you are able to take ANY of these cases, please call us (732-7110).

Thank you for your consideration.

Chris

Springfield District Court

Juan Rodriguez; 04-16-04 PTH; #0423CR2300; Traf. cocaine, poss. to dist. class A, poss. to dist. class E, poss. to dist. class D; Bail: \$25,000 cash; (arr. 03-18).

Yuri Rankin; 03-31-04 arr.; #04280 Dist class B, schoolzone; Bail unsure (arr. 02-18).

Holyoke District Court

Charlie Justino Vega; 04-28-04 PTH; #0417CR001297; Armed Robbery; Bail: \$10,000 cash, \$100,000 surety; (co-def.: Jose Montanez); (arr. 03-31)

Jose Montanez; 04-28-04 PTH; #0417CR001296; Armed Robbery; Bail: \$5,000 cash, \$50,000 surety; (co-def.: Charlie Justino Vega); (arr. 03-31)

Julio Cesar Rodriguez Morales; 04-15-04 PTH; #0417CR0670; Dist. class A, conspiracy, school zone; Bail: \$10,000 cash, \$25,000 surety; (co-defs.: Joel J. Rodriguez, Jose Rodriguez); (arr. 03-19).

Joel J. Rodriguez; 04-15-04 PTH; #0417CR0674; Trespass, poss. class A, poss. to dist. class A, conspiracy, school zone; Bail: \$5,000 cash, \$30,000 surety; (co-defs.: Julio Cesar Rodriguez Morales, Joel Rodriguez); (arr. 03-19).

Chicopee District Court

FW: cases needing superior court certified attys.

Heather Turconi; 04-08-04 PTH; #0420CR0423; A&B, Armed Assault in a Dwelling, B&E n/t for a Felony; Bail \$100----Held (arr. 03-11)

cases needing superior court certified attys.

Subject: cases needing superior court certified attys.

Date: Tue, 4 May 2004 18:32:38 -0400

From: "Hampden County Bar Advocates" <hampdenba@publiccounsel.net>

To: <hampdenba@publiccounsel.net>

Listed below are cases needing to be assigned to superior court certified attorneys. If you are able to take ANY of these cases, please call us (732-7110).

Thank you for your consideration.

Chris

Springfield District Court

Jesus Gonzalez; 05-04-04 PTH; #0423CR3333; Traf. in cocaine, firearm use in felony, poss. firearm w/out FID, carry dang. weap., school zone, carry firearm w/out lic.; Bail: \$10,000 cash, \$100,000 surety; (arr. 04-13).

Luciano Claudio, Jr.; 05-19-04 VOP; #0423CR3548, (VOP on #0323CR9962--Poss. class D, subseq. off.); Dist. class B (subseq. off., poss. class D (subseq. off.), school zone; Bail: \$10,000 cash/surety; (arr. 04-20).

Holyoke District Court

Julio Cesar Rodriguez Morales; 05-07-04 Probable Cause Hrg.; #0417CR0670; Dist. class A, conspiracy, school zone; Bail: \$10,000 cash, \$25,000 surety; (co-defs.: Joel J. Rodriguez, Jose Rodriguez); (arr. 03-19).

Joel J. Rodriguez; 05-05-04 PTH; #0417CR0674; Trespass, poss. class A, poss. to dist. class A, conspiracy, school zone; Bail: \$5,000 cash, \$30,000 surety; (co-defs.: Julio Cesar Rodriguez Morales, Joel Rodriguez); (arr. 03-19).

Michael Carabello; 05-05-04 PTH; #0417CR1329, 0417CR1333; Poss. Class D, armed asslt in dwelling, kidnapping (2 cts.), mal. destr. prop., armed asslt in dwelling, threat to commit crime; Bail: \$100,000

cases needing superior court certified attys.

cash,
\$500,000 surety; (arr. 04-02).

Jorge L. Garcia; 06-11-04 PTH; #0417CR1127; Stat. rape of child (3
cts.); Bail: \$10,000 pers. surety; (arr. 04-07).

David Vaddy; 05-19-04 PTH; #0417CR1630; Poss. class D, dist. class
A--subseq. off., conspir., school zone; Bail: \$15,000 cash, \$150,000
surety; (arr. 04-23).

Alberto Rivera; 05-20-04 PTH; #0417CR1624; Dist. class A--subseq.
off., conspir., school zone; Bail: \$10,000 cash, \$100,000 surety;
(arr. 04-23).

Gregorio Garcia; 05-28-04 PTH; #0417CR0743; dist. class A--amended
to
subseq. off., conspiracy, school zone; Bail: \$25,000 cash, \$250,000
surety. (charge amended 04-28).

Chicopee District Court

Hector L. Velez, Jr.; 05-03-04 PTH; #0420CR0640; Poss. class D,
fail
to stop/yield, unreg., unins., # plate viol. to conceal ID, poss. to
dist. cocaine, school zone; Not held; (arr. 04-09).

Abraham Muniz; 05-13-04 PTH; #0420CR0697; Armed asslt to rob;
Bail:
\$5,000; (arr. 04-20).

Thiago Barros; 05-13-04 PTH; #0420CR0711; Armed rob; Bail:
\$50,000
cash; (arr. 04-20).

Palmer District Court

Tami Przybycies; 05-25-04 PTH; #0443CR0430; OUI liquor--sixth
offense; Released w/out bail, conditions--alcohol free, random
testing,
no driving; (arr. 04-06).

Nelson Dinzey; 05-26-04 PTH; #0443CR0416; A&B on correctional
officer; Under sentence; (arr. 04-16).

Alexander Perez; 05-12-04 PTH; #0443CR0419; A&B on correctional
officer--2 cts.; Bail: \$500--posted; (arr. 04-16).

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SINGLE JUSTICE NO.

NATHANIEL LAVALLEE, CORDELLE SIMMONDS, ISSAC VERDEJO, JAMAR T. GILLERSON, ARNOLD FREEMAN A.K.A. JEFFREY THOMPSON, HAROLD VARGAS, REGINALD C. SMITH, COREY L. SMITH, DEBRA STAPLES, CHARLES FOLEY, DOUGLAS LEWIS, KEITH E. TASKEY, DANA J. JONES, ANGEL RIVERA, JOSEPH POLAMTIER, MARIA ALVARADO, JONATHAN MARRERO, OMAR HALL, LUIS A. OSORIO, OTHER UNKNOWN INDIGENT CRIMINAL DEFENDANTS, AND COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF FUTURE DEFENDANTS)

V.

THE JUSTICES OF THE SPRINGFIELD DISTRICT COURT

AFFIDAVIT OF ATTORNEY CAROL J. GRAY IN SUPPORT OF
PETITION FOR RELIEF PURSUANT TO G.L. c. 211, §3

I, Carol J. Gray, upon information and belief, state that the following is true to the best of my knowledge, information, and belief.

1. I am a staff attorney with the Committee for Public Counsel Services, Public Defender Division, in Springfield, Massachusetts.
2. Our office handles new arraignments in Springfield District Court involving charges that are likely to be indicted in the Hampden County Superior Court. I was assigned to do bail hearings on behalf of our office on Monday, May 3, 2004. Our office was assigned to three defendants on May 3, 2004. One of those cases was a home invasion case involving four codefendants. Another was a drug trafficking case in which

numerous individuals were arrested when police conducted a search of a house.

3. While I was in court room number one of the Springfield District Court waiting to do the arraignments that had been assigned to me, I learned that there were no bar advocates present in court to accept appointments in the dozens of other cases being arraigned that day.

4. I saw many defendants held on either cash bails that they could not afford or held without right to bail. The Honorable John M. Payne, Jr., was presiding over all matters in courtroom one on that day. Whenever Judge Payne held a defendant without right to bail or on a cash bail that the defendant could not afford, he informed the defendant that since there was no lawyer present who could represent the defendant, the bail would be set without prejudice and the defendant would be brought back to court the next day in the hopes that there would be a lawyer available at that time.

5. The defendants who were held without right to bail were held either because the Commonwealth had filed a motion to revoke bail, G.L. c.276, §58, third paragraph, which was allowed without prejudice until the following day, or because the Commonwealth was seeking to have the defendant detained prior to trial under G. L. c.276, §58A. When Judge Payne held a defendant for the latter reason, he informed the defendant that he would be held without right to bail until a dangerousness hearing could be held with the defendant represented by a lawyer. Judge Payne told these individuals that they too would be brought back the following day in the hopes that they could be provided a lawyer at that time.

6. Regarding bail revocation motions brought by the Commonwealth, I recollect that these motions were allowed without any significant showing on the part of the

Commonwealth and without the court making any finding on the record that the two prongs required for bail revocation had been met (i.e., that the defendant is a serious danger to the community and that there is probable cause that the new offense occurred).

7. I observed one individual who was being held attempt to represent himself and to speak on his own behalf. Judge Payne explained to this defendant that it might not be in his best interest to represent himself and to make statements. This defendant then stopped speaking and was held.

8. I observed another defendant who was being arraigned on a domestic charge. My recollection is that the Commonwealth was attempting to hold this individual pursuant to G.L. c.276, §58A. This defendant attempted to speak on his own behalf and to explain how the woman bringing charges against him was not telling the truth.

9. I represented one individual on a home invasion case which was factually weak based on the police report. After I pointed out the weaknesses in the police report, Judge Payne agreed to release my client on \$1,000 personal surety. The other three co-defendants in this case had already been arraigned, had bails set of \$1,000 cash, and were held on those bails.

10. A second defendant I represented was charged with drug trafficking after being found in a house that was searched by the police. He was one of six or seven co-defendants arrested in that case. I reached an agreement with the Commonwealth as to bail in this defendant's case, met with the family to discuss bringing bail money, and they had bail money with them when the defendant was arraigned after lunch. Numerous other codefendants in this case were held on bails they could not make.

11. Undersigned counsel was in the courtroom for hours and observed dozens of

defendants brought into the courtroom and held after their arraignments. I spoke to the prosecutor who was there all day and asked him if he also estimated that dozens of defendants were being held without being provided lawyers. He agreed that my estimate was accurate.

12. After observing this very disturbing violation of so many defendants' constitutional rights, and after consulting with my supervisor, I drafted a pro se Motion for Change in Bail to Personal Recognizance to hand out to defendants the following morning, since there was a good possibility that there would also be no bar advocates available to take cases then. A copy of the motion I drafted is appended to this affidavit.

13. When I went to the cellblock the following day, Tuesday, May 4, 2004, I handed out this pro se motion to about ten to fifteen defendants who were going to be arraigned that day. I explained to these defendants that I could not represent them or give them legal advice, but that, if they did not have lawyer, they could have a motion to file if they chose to do so on their own behalf. All of the defendants I spoke to wanted a copy of this motion. When I presented these defendants with this motion and explained there might not be any lawyer available to represent them, they were distressed but did not become unruly in any way. I did not hear any concerns among any of the court officers concerning the prisoners who had been provided with a pro se motion.

14. I spoke to the court officers in the cellblock before handing out the pro se motions to let them know what I intended to do. Initially there appeared to be no problem with this. One of the court officers asked for me to wait until all of the prisoners in the cellblock had been unshackled before I approached. I followed this instruction.

15. While I was waiting for the arrival from the Hampden County House of

Correction of those defendants who had been arraigned without counsel the previous day, I was informed by one of the court officers that I would no longer be allowed to distribute the pro se motion to prisoners. I asked the officer who had given him this instruction. He said the instruction had come from Judge William W. Teahan. Jr., after Judge Teahan had been provided with a copy of the pro se motion that I had drafted. The court officer raised a concern that the prisoners might pose a security problem if they felt they were being held in violation of their rights. The officer also said that I could not speak with any prisoner whom I did not represent. Lastly, the officer said that I was to leave the cellblock immediately.

16. Undersigned counsel and Attorney Andrew Klyman, who is Attorney-in-Charge of the CPCS office in Springfield, then met with Judge Teahan to be certain that we accurately understood his position. Judge Teahan said that he would not allow an attorney to hand a motion to any defendant unless the attorney was representing that defendant. When Attorney Klyman asked whether the motions could be made available to the defendants in some manner in court, Judge Teahan said no. Judge Teahan also discussed the issue behind the lack of bar advocates in the district courts, namely the denial of bar advocates' motions for compensation at \$60 per hour. Judge Teahan said that after learning that three motions for such compensation had been allowed in western Massachusetts, he had instructed all judges in the Springfield District Court not to grant any such motion.

17. I have been informed that some private attorneys have gone into courtroom one this week to offer to take cases for \$60 per hour but that the presiding judge denied their motions.

18. Undersigned counsel also observed court proceedings in courtroom one on May 4, 2004. Judge Payne was again on the bench. I saw the same defendants who had been held without lawyers the previous day again being held without having any lawyer to speak on their behalf. Judge Payne told each defendant who was held that the defendant would be brought back the following day, at which time Attorney William Leahy would be appointed to represent the defendant. Judge Payne likewise told this to individuals who had had their bail revoked or who were being held while awaiting §58A hearings.

19. I saw one individual who was charged as a fugitive from another state. This individual said he was willing to waive extradition today and sign the paper. The court recommended that he wait until the court could provide him with a lawyer before signing a paper waiving his rights.

20. I noted that Judge Payne took particular notice of the three codefendants who had been held the previous day on \$1,000 cash bail on home invasion charges while the defendant whose case I had been assigned was released on \$1,000 personal surety. Judge Payne said that he had asked the Commonwealth to review the case to see if it would reconsider its bail request. The prosecutor said she had reviewed the case and would be seeking personal surety rather than a cash bail.

21. I observed one unrepresented defendant who had had a cash bail set on him the previous day, but who then had that bail revoked by the court upon the Commonwealth's request that he be held without right to bail pending a §58A hearing. The court held the defendant without right to bail without prejudice.

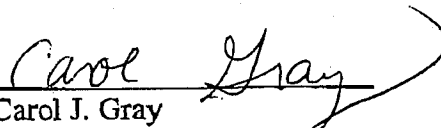
22. Another unrepresented defendant I saw being arraigned was said by the

prosecutor to have an alias. The judge asked the defendant what his correct name was. The defendant offered an explanation as to why another name had once been attributed to him, and stated on the record that the name on the complaint in the current case was not his true name.

23. I was present for the arraignments of several defendants to whom I had earlier provided copies of the pro se Motion for Change of Bail to Personal Recognizance. One defendant referred to the motion without presenting it and the judge said he would note the defendant's oral motion and was denying it. Two other defendants filed the motion pro se. The court denied these motions, and noted the defendants' objections to the denial. One defendant, Mr. Corey L. Smith, attempted to argue his pro se motion before presenting the motion to the court. My recollection is that Mr. Smith said, "Your Honor, I have rights under the Twelfth Amendment. I have rights under the Sixth Amendment. I have rights under article two of Massachusetts...." After the court denied the motion, the defendant said, "So what you're telling me is that this is unconstitutional but you're going to do it anyway." The defendant was held without right to bail.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 5th

DAY OF MAY, 2004.


Carol J. Gray

BBO #600892

COMMITTEE FOR PUBLIC COUNSEL SERVICES

1145 Main Street

Springfield, MA 01103-2123

(413) 732-3107

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SPRINGFIELD DISTRICT COURT

COMMONWEALTH

V.

(Write in your name on this line)

MOTION FOR CHANGE IN BAIL TO PERSONAL RECOGNIZANCE

Now comes the defendant, pro se, in the above-entitled matter and respectfully requests release on personal recognizance since the court has been unable to appoint a lawyer to represent the defendant in violation of his federal and state constitutional rights.

The right to counsel begins at “the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information or arraignment.” Kirby v. Illinois, 406 U.S. 682, 689 (1972), quoted in Commonwealth v. Smallwood, 379 Mass. 878, 884 (1980). My right to counsel and to equal protection of the law is protected by the United States Constitution in the 6th and 14th Amendments and in Article 12 of the Massachusetts Declaration of Rights.

Since these fundamental rights were violated by the court’s not providing me counsel at my arraignment, it would be fundamentally unfair for the court to continue to hold me on a bail that I cannot afford or to hold me without right to bail without providing me any lawyer to speak on my behalf.

There is a statutory presumption to personal recognizance. Chapter 276, s. 58 states that the court “shall admit such person to bail on his personal recognizance without surety unless said justice.... determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person before the court.” If no lawyer is present to represent me, then no adversarial hearing can occur to overcome this presumption of personal recognizance.

Accordingly, I request that the court allow me to be released on my personal recognizance.

Respectfully submitted,

(Sign your name here.)
Defendant

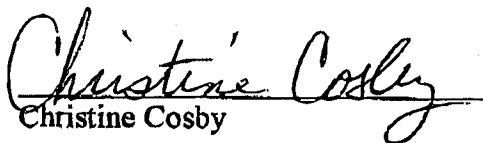
AFFIDAVIT OF CHRISTINE COSBY

I, Christine Cosby, under oath do depose and say that:

1. I am the administrator of Hampden County Bar Advocates, Inc. and have been so employed since 1991. My duties include the scheduling of bar advocate attorneys for duty days and the reassignment of cases to superior court certified attorneys.
2. Hampden County Bar Advocates, Inc. has contracted with Committee for Public Counsel to provide attorneys for indigent defendants on criminal matters in Hampden County that are not covered by the Public Counsel Division.
3. For quite some time I have had trouble finding lawyers willing to accept appointments on superior court felonies that originate in the outlying district courts. Holyoke has been a particular problem. We recently had three individuals who were held in jail for approximately two months without attorneys because I was unable to get any of our participants to accept the cases.
4. I have worked diligently and continue to do so in an effort to find attorneys for individuals in the Holyoke, Chicopee, Palmer, Springfield, and Westfield District Courts who are charged with superior court felonies.
5. In addition to my attempts to find counsel from our own panel of participating attorneys, I also contact the Bar Advocate Programs of Worcester County, Hampshire County, Franklin County, and Berkshire County each day, requesting that any superior court qualified attorney in any of those counties accept an assignment to represent some of our defendants on superior court felonies, especially those who are held on bail.

6. There are currently no new attorneys seeking to join the Hampden County Bar Advocates, Inc. panel who would be qualified to accept appointment in these cases.
7. I know of no attorney who is not a member of our panel who has expressed a willingness to handle these cases at the current levels of compensation.
8. We have lost a substantial number of participating attorneys in recent years. I believe that at least part of the reason for this is the current levels of compensation that we are authorized to offer.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY
THIS 5th DAY OF MAY, 2004.


Christine Cosby

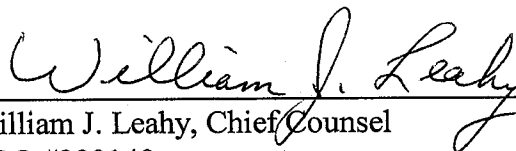
CERTIFICATE OF SERVICE

I, William J. Leahy, do hereby certify that on this 6th day of May, 2004, I served a copy of the petitioner's "Petition for Relief Pursuant to G.L. c. 211, §3" and the affidavits and memorandum of law in support thereof, by mailing copies by certified mail to the following:

Honorable William W. Teahan, Jr., Regional Administrative Justice
Honorable Robert F. Kumor, Jr., First Justice
Honorable John M. Payne, Jr., Justice
Springfield District Court
50 State Street
P.O. Box 2421
Springfield, MA 01101-2421

and by hand-delivering to the office of the following:

David Kerrigan, Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108

A handwritten signature in cursive script, reading "William J. Leahy", is written over a horizontal line.

William J. Leahy, Chief Counsel
BBO #290140

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